

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF THE
DAYTON POWER AND LIGHT COMPANY'S
ALTERNATIVE ENERGY RIDER.

CASE NO. 20-553-EL-RDR

SECOND FINDING AND ORDER

Entered in the Journal on March 23, 2022

I. SUMMARY

{¶ 1} The Commission adopts the recommendations found in the audit report for the second phase of the Commission's two-part audit of The Dayton Power and Light Company's alternative energy rider.

II. PROCEDURAL HISTORY

{¶ 2} The Dayton Power and Light Company (DP&L or the Company) is an electric distribution utility and a public utility as defined in R.C. 4928.01(A)(6) 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 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. Additionally, R.C. 4928.64 through R.C. 4928.645 define a renewable portfolio standard (RPS) that requires EDUs to acquire specific minimum percentages of electricity from renewable energy resources each year, with those requirements being implemented through annual compliance obligations beginning in 2009.

{¶ 4} Originating with the Company's first ESP (ESP I), DP&L sought an avoidable alternative energy rider (AER) to recover costs incurred to comply with R.C. 4928.64, et seq. On June 24, 2009, the Commission approved the AER in an Opinion and Order adopting a stipulation and recommendation in that first ESP proceeding. *In re The Dayton Power and*

Light Co., Case No. 08-1094-EL-SSO, Opinion and Order (June 24, 2009) at 5. As originally designed by DP&L and approved by the Commission, the bypassable AER was subject to an annual true-up of actual costs incurred, with the annual true-up taking place no later than June 1 of each year through an annual ATA filing.

{¶ 5} With its second ESP application, DP&L proposed to continue the AER but to also modify the rider such that it was subject to true-up on a quarterly basis instead of annually. *In re The Dayton Power and Light Co.*, Case No. 12-426-EL-SSO (*ESP II Case*), Application (Oct. 5, 2012), Amended Application (Dec. 12, 2012). On September 4, 2013, the Commission issued an Opinion and Order in which the shift to seasonal quarterly true-ups of the AER was approved; other changes proposed by DP&L were not adopted or approved. *ESP II Case*, Opinion and Order (Sep. 4, 2013) at 31.

{¶ 6} Most recently, in the Company's third ESP proceeding (ESP III), DP&L proposed eliminating the AER as a separate rider mechanism and, in its place, accounting for recovery of RPS compliance costs through an alternative energy component of the standard offer rate (SOR) tariff. *In re The Dayton Power and Light Co.*, Case No. 16-395-EL-SSO (*ESP III Case*), Application (Feb. 22, 2016), Amended Application (Oct. 11, 2016).¹ As part of this proposal, DP&L committed to separately identifying the RPS compliance costs represented by the alternative energy component in the SOR; cost recovery remains subject to Commission audit. On October 20, 2017, the Commission modified and adopted an amended stipulation to establish ESP III; the Opinion and Order approved the shifting of cost recovery of the RPS compliance costs as proposed by the Company. *ESP III Case*,

¹ For purposes of this proceeding, the Commission uses "AER" to refer to both the AER itself and the subsequent alternative energy component included in DP&L's SOR.

Opinion and Order (Oct. 20, 2017) at ¶ 14. Consequently, effective November 1, 2017, DP&L began RPS cost recovery through the SOR.²

{¶ 7} On April 8, 2020, in this proceeding, the Commission issued an Entry directing Staff to issue a request for proposal for audit services to assist in a management/performance and financial audit of DP&L's AER recovery mechanism. The Commission directed that the audits be conducted in a two-audit cycle with Audit 1 reviewing the AER in place from June 1, 2016, through May 31, 2020, and Audit 2 reviewing the AER in place from June 1, 2020, through May 31, 2021. The Commission directed prospective bidders to submit proposals to Staff by May 6, 2020, and to demonstrate an understanding of the project and the work required.

{¶ 8} By Entry dated June 3, 2020, the Commission selected Larkin & Associates, PLLC (Larkin) to perform the requested audit services.

{¶ 9} On December 3, 2020, Staff filed the management/performance and financial audit report, in both a confidential and a public version, for Audit 1.

{¶ 10} By Entry dated March 10, 2021, the attorney examiner granted a motion for a protective order filed with regard to the December 3, 2020 audit report. The Entry also established a procedural schedule under which motions to intervene and initial comments were due by March 30, 2021, and reply comments were due by April 9, 2021.

{¶ 11} On March 30, 2021, Staff filed comments expressing agreement with the findings and recommendations presented in Larkin's report. Staff recommended that the Commission adopt the auditor's recommendations and require Audit 2 to review their implementation.

² Subsequent proceedings in the *ESP III Case* resulting in the Company's reversion to and operation under ESP I have not affected DP&L's recovery of RPS compliance costs; these costs continue to be recovered through the alternative energy component of the SOR. See *In re the Application of The Dayton Power and Light Company to Update its Standard Offer Rate*, Case No. 18-638-EL-RDR; *In re the Application of the Dayton Power and Light Company to Update its Standard Offer Rate Tariffs*, Case No. 19-841-EL-RDR.

{¶ 12} Ultimately, by Finding and Order issued June 16, 2021, the Commission did adopt the auditor's recommendations as outlined in the report. The Commission specifically found that Larkin's management/performance and financial recommendations were reasonable and should be adopted in their entirety. The Commission further ordered that Larkin should review the implementation of the recommendations as the auditor conducted the second phase of the AER audit, i.e., Audit 2. Finding and Order (June 16, 2021) at ¶ 18.

{¶ 13} Meanwhile, by Entry dated May 6, 2021, the attorney examiner issued a procedural schedule for Audit 2. Therein, the attorney examiner directed that the final audit report for Audit 2 be filed by December 3, 2021. The Entry also established January 7, 2022, as the filing deadline for motions to intervene and initial comments regarding the report and January 21, 2022, as the deadline for filing reply comments.

{¶ 14} On May 19, 2021, Ohio Consumers' Counsel filed a motion to intervene on behalf of DP&L's residential customers. OCC asserts it is entitled to intervene under R.C. 4903.221 and Ohio Adm.Code 4901-1-11. The motion is unopposed. The Commission finds that the motion to intervene is reasonable and should be granted.

{¶ 15} On December 3, 2021, Larkin filed the management/performance and financial audit report for Audit 2 (Audit Report) in both a confidential and a public version.

{¶ 16} Also on December 3, 2021, DP&L filed a motion for a protective order requesting that information redacted from the public version of the Audit Report be kept confidential. With the motion, DP&L seeks to protect (1) administrative and labor costs that, if disclosed, would reveal competitively sensitive employee compensation information and (2) information regarding the negotiated procurement of renewable energy credits (RECs) from third-party suppliers (together, the Information) from disclosure to the public record. The Company asserts that the Information should be protected because it constitutes trade secrets under R.C. 1333.61(D). The motion is unopposed.

{¶ 17} 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. R.C. 149.43, in turn, states 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). R.C. 1333.61(D) defines “trade secret” to include “any business information or plans [or] financial information” that both “derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use” and “is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” *See also State ex rel. Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524, 687 N.E.2d 661 (1997). Additionally, 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.

{¶ 18} Upon review of the relevant material, the Commission finds that the Information does constitute business information or plans and financial information that both derives independent economic value from not being generally known to competitors and is subject to reasonable efforts to maintain secrecy. As such, the Information qualifies as a trade secret under Ohio law. R.C. 1333.61(D). The administrative and labor costs constitute the type of financial information that the Commission has previously shielded from public view, recognizing that public release of the information could give competitors and third parties inappropriate access to what is competitively sensitive data. *See In re Commission Review of the Capacity Charges of Ohio Power Co. and Columbus S. Power Co.*, Case No. 10-2929-EL-UNC, Entry (Apr. 13, 2012) at 2-3. Similarly, the data regarding the negotiated procurement of RECs from third party suppliers, if widely known, would give competitors an unfair advantage in the marketplace. Furthermore, DP&L represents that

the Information is not known outside DP&L and, even within the Company, is not shared with employees absent a legitimate institutional need. Accordingly, the Commission finds that the motion for protective order should be granted. 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 as least 45 days in advance of the expiration date.

{¶ 19} Ultimately, no comments were filed with regard to the Audit Report.

III. DISCUSSION

{¶ 20} The December 3, 2021 Audit Report covered the second phase of the management/performance and financial audit of the AER: the period of June 1, 2020, through May 31, 2021. According to the Audit Report, Larkin conducted its review through a combination of document review, interrogatories, and interviews. Additionally, as a part of its examination of renewable energy resources, Larkin asked the Company a series of questions pertaining to its renewable energy credit (REC) purchases through both data requests and informal inquiries.

{¶ 21} As it did in the report for Audit 1, Larkin begins by addressing the Company's implementation of recommendations from the previous rider audit case, *In the Matter of the Fuel Adjustment Clause for the Dayton Power and Light Company*, Case No. 16-224-EL-FAC (2015 Audit). Specifically, Larkin notes the Company was to develop and implement a REC procurement strategy considering several enumerated concerns. In our June 16, 2021 Finding and Order, the Commission adopted Larkin's recommendation that the Company demonstrate its compliance with the previous audit by providing a written document containing DP&L's REC procurement strategy. In the current Audit Report, Larkin relates that the Company provided a document (REC Guidelines) developed in response to the 2015 Audit and Larkin's recommendations from the Audit 1 report. Upon its review of the REC Guidelines, Larkin recounts that it appears that the Company has developed the REC procurement strategy that was recommended in the 2015 Audit.

{¶ 22} Continuing, Larkin provides an update regarding DP&L's compliance with the auditor's six recommendations regarding the Company's management practices, as well as the auditor's four recommendations regarding the financial audit, all of which were adopted by the Commission in the June 16, 2021 Finding and Order. The six management audit recommendations focused on the Company's need to formally document its REC procurement and REC inventory management strategy. Larkin notes that DP&L provided a document entitled "AES Ohio³ AER REC Legislation Memo" (AER Memo). The stated purpose of the AER is to implement a process by which the Company can monitor the impacts of House Bill 6 (HB 6) and to maintain a written record of the meetings related to HB 6 so the company is positioned to fully meet compliance regulations. The Audit Report relates that the strategies, processes, and guidelines contained in the AER Memo and the REC Guidelines serve to demonstrate that the Company has taken necessary steps to satisfy the various management recommendations to the extent those recommendations remain relevant.⁴ Accordingly, Larkin opines that the Company appears to have complied with all management recommendations. Similarly, Larkin reports that DP&L provided documents to address and demonstrate compliance with the four financial audit recommendations. Larkin emphasizes that DP&L fully implemented the third recommendation regarding monthly journal entry packets.

{¶ 23} Turning to the second phase of the management/performance audit in the Audit Report, Larkin made 38 major management audit findings and 23 financial audit findings. Ultimately, these findings led to two management audit recommendations and one financial audit recommendation. Larkin makes no new recommendations stemming from Audit 2. Instead, all recommendations are for follow through on previous audits. For the first management audit recommendation, Larkin reiterates that, with the REC

³ Since the initiation of this proceeding, The Dayton Power and Light Company has begun doing business as AES Ohio.

⁴ The Audit Report notes that Larkin concluded that proposed legislation to repeal HB 6 had not moved forward and appears unlikely to be signed into law. This, in essence, renders the fifth recommendation moot.

Guidelines, the Company developed the REC procurement strategy necessary to satisfy the 2015 audit. The auditor states, however, that insufficient time has passed to determine whether the REC Guidelines have been put into practice. For the second, and in much the same vein, Larkin states that insufficient time has passed since the REC Guidelines and AER Memo were developed to determine whether the guidelines and processes contained in those documents have been implemented by DP&L and put into practice. Finally, Larkin notes that the Company did provide documentation to address each of the four financial recommendations from Audit 1, but, as applicable, the REC Guidelines and AER Memo were not developed and provided to Larkin until November 2021, making it infeasible to determine whether those documents have been put into practice. Therefore, and as to each, Larkin recommends that the next AER management/performance and financial audit determine whether the Company has implemented the processes and procedures set forth in the REC Guidelines and AER Memo.

{¶ 24} The Commission notes that no party filed any comments or objections regarding the Audit Report. Upon our review, the Commission finds that Larkin's management/performance and financial recommendations are reasonable and should be adopted in their entirety.

IV. ORDER

{¶ 25} It is, therefore,

{¶ 26} ORDERED, That OCC's motion to intervene be granted as stated in Paragraph 14. It is, further,

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

{¶ 28} ORDERED, That the recommendations in the Audit Report be adopted. It is, further,

{¶ 29} ORDERED, That a copy of this Second Finding and Order be served upon all parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Dennis P. Deters

PAS/hac

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Case No(s). 20-0553-EL-RDR

Summary: Finding & Order adopting the recommendations found in the audit report for the second phase of the Commission's two-part audit of The Dayton Power and Light Company's alternative energy rider electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio