

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
INVESTIGATION INTO AES OHIO'S
COMPLIANCE WITH THE OHIO
ADMINISTRATIVE CODE AND POTENTIAL
REMEDIAL ACTION.

CASE NO. 21-1220-EL-UNC

ENTRY

Entered in the Journal on April 8, 2022

{¶ 1} The Dayton Power and Light Company d/b/a AES Ohio (AES Ohio 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, AES Ohio is subject to the jurisdiction of this Commission.

{¶ 2} Ohio Adm.Code Chapter 4901:1-10 sets forth electric service and safety standards applicable to investor-owned electric utilities such as AES Ohio. Ohio Adm.Code 4901:1-10-10, entitled Distribution System Reliability, generally prescribes the measurement of each electric utility's service reliability, the development of minimum performance standards for such reliability, and the reporting of performance against the established standards. One such reliability standard is CAIDI, or the customer average interruption duration index, which represents the average interruption duration or average time to restore service per interrupted customer. Ohio Adm.Code 4901:1-10-10(B)(1). Each electric utility is required to file with the Commission an application to establish company-specific minimum reliability standards, including a company-specific CAIDI performance standard. Ohio Adm.Code 4901:1-10-10(B)(3). Once approved by the Commission, any authorized performance standards approved for an electric utility shall remain in place until superseded by revised standards as approved by the Commission. Ohio Adm.Code 4901:1-10-10(B)(8). Additionally, each utility must file an annual report (Rule 10 Report) with the Commission that provides information regarding the annual performance and supporting data for each service reliability index along with supporting data. Ohio Adm.Code 4901:1-10-10(C). If the annual performance of an electric utility does not meet that utility's performance standard for any index, such as CAIDI, the electric utility shall file, by March

31 of the year after the standard was missed, an action plan that includes: (1) the factors that contributed to the actual performance level for that index and (2) a proposal for improving performance to a level that meets or exceeds the performance standards authorized for each missed reliability index, including each action taken or planned to be taken, and the anticipated completion date. Ohio Adm.Code 4901:1-10-10(D)(1). Finally, pursuant to Ohio Adm.Code 4901:1-10-10(E), “[f]ailure to meet the same performance standard for two consecutive years shall constitute a violation of this rule.”

{¶ 3} Ohio Adm.Code Chapter 4901:1-23 contains rules prescribing the procedures for Commission Staff to administer and enforce the electric service and safety standards found in Chapter 4901:1-10 and any Commission order issued thereunder. Among other things, the Chapter empowers Staff to issue notices of probable noncompliance with proposed corrective action and/or a proposed forfeiture and to enter into an agreement with an electric utility regarding alleged noncompliance. Ohio Adm.Code 4901:1-23-02 and 4901:1-23-04. Additionally, the Commission may initiate a compliance proceeding or other proceeding on its own initiative, after an incident has occurred, after a complaint is filed pursuant to R.C. 4905.26, or after a staff notice of probable noncompliance is served. Ohio Adm.Code 4901:1-23-05.

{¶ 4} Regarding agreements, Ohio Adm.Code 4901:1-23-04 provides that if Staff and an electric utility reach and enter into an agreement regarding the violation of a rule within Ohio Adm.Code Chapter 4901:1-10, a proposed corrective action or remedy, or the amount of a forfeiture or other payment, then the agreement must be reduced to writing in a settlement agreement. With one exception¹, the written settlement agreement shall not be effective until the stipulation is filed with the Commission for approval pursuant to a

¹ Under Ohio Adm.Code 4901:1-23-04(B), if the settlement agreement provides for payment of a forfeiture or other payment of \$10,000 or less, the agreement shall be deemed accepted by the Commission and fully enforceable upon the electric utility upon its execution.

compliance or other proceeding and the stipulation is approved by and made the order of the Commission. Ohio Adm.Code 4901:1-23-04(A).

{¶ 5} On June 10, 2021, Staff issued a notice of probable noncompliance (Notice) to AES Ohio. The Notice indicates that AES Ohio's annual Rule 10 Reports for calendar years 2019 and 2020 show that the Company missed its approved CAIDI standard for two consecutive years, rendering AES Ohio in probable noncompliance with Ohio Adm.Code 4901:1-10-10(E). The Notice also notes that, in accordance with Ohio Adm.Code 4901:1-10-10(D), AES Ohio submitted an action plan including factors that the Company believes contributed to its actual CAIDI performance level. Staff found, however, that the submitted action plan was insufficient. The Notice delineates the reasons for Staff's finding of insufficiency and states that, "[o]verall, the action plan provided by AES Ohio relies heavily on investment plans not yet approved by the Commission and standards revisions for which an application has not yet been filed." Additionally, the Notice sets forth a proposed corrective action plan and proposed forfeiture. For corrective action, Staff proposes that AES Ohio provide Staff with a revised action plan that addresses the deficiencies indicated in the Notice. For a proposed forfeiture, Staff proposes a forfeiture of \$30,000 against the Company. Finally, the Notice requested the AES Ohio respond to the Notice with its plan to address the proposed corrective action by June 25, 2021.

{¶ 6} On December 9, 2021, Staff opened this case docket and, pursuant to Adm.Code 4901:1-23-04(A), filed a Joint Stipulation and Recommendation (Stipulation). The Stipulation is executed by AES Ohio and Staff and attests to resolve all issues identified in the June 10, 2021 Notice. As stated in the Stipulation², AES Ohio and Staff agree and recommend that the Commission find that:

- (1) AES Ohio missed its CAIDI for two consecutive years (2019 and 2020),
which is a violation of Ohio Adm.Code 4901:1-10-10(E), and

² This is a summary of the provisions agreed to by AES Ohio and Staff and is not intended to replace or supersede the actual Stipulation.

- (2) Staff raised concerns about the Company's initially filed action plan, which concerns were addressed to Staff's satisfaction in a subsequently submitted action plan.

The Stipulation also relates that AES Ohio and Staff agree to the following actions:

- (3) The Company will use its best efforts to ensure it meets its CAIDI standards going forward;
- (4) The Company agrees to a forfeiture in the amount of \$30,000, with \$10,000 payable within 30 days of the approval of the Stipulation and the remaining \$20,000 held in abeyance pending future reliability performance as noted below;
- (5) If the Company does not meet its CAIDI standard in either or both performance years 2021 and 2022, AES Ohio must pay the \$20,000 forfeiture held in abeyance; and
- (6) The Stipulation is entered by AES Ohio with the expectation that it will be promptly approved without protests or controversy. In the event that any third party or entity files to intervene and/or submits objections to the prompt approval of the Stipulation, either Staff or the Company may withdraw from the Stipulation upon 10 days' written notice to the other, in which case the Stipulation will be of no force and effect and shall be considered in any subsequent proceeding as if it were never executed or filed.

{¶ 7} On December 17, 2021, Ohio Consumers' Counsel (OCC) filed a motion to intervene on behalf of AES Ohio's residential customers that also serves to generally protest the Stipulation and the procedure leading to its filing. OCC asserts that it is entitled to intervene under R.C. 4903.221, Ohio Adm.Code 4901-1-11, and Ohio Supreme Court

precedent. The motion is unopposed. The attorney examiner finds that OCC's motion to intervene should be granted.

{¶ 8} The attorney examiner further finds that AES Ohio, Staff, and OCC should observe the following schedule for the filing of comments regarding the Stipulation:

(a) April 28, 2022 – deadline for filing initial comments.

(b) May 9, 2022 – deadline for filing reply comments.

{¶ 9} It is, therefore,

{¶ 10} ORDERED, That OCC's motion to intervene be granted. It is, further,

{¶ 11} ORDERED, The AES Ohio, Staff, and OCC follow the schedule for filing comments set forth in Paragraph 8. It is, further,

{¶ 12} 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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in

Case No(s). 21-1220-EL-UNC

Summary: Attorney Examiner Entry ordering that OCC's motion to intervene be granted and that AES Ohio, Staff, and OCC should observe the following schedule for the filing of comments: April 28, 2022 – deadline for filing initial comments and May 9, 2022 – deadline for filing reply comments electronically filed by Heather A. Chilcote on behalf of Patricia Schabo, Attorney Examiner, Public Utilities Commission