

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 April 22, 2022

{¶ 1} The Dayton Power and Light Company d/b/a/AES Ohio (AES Ohio 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.

{¶ 2} 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.

{¶ 3} 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.

{¶ 4} By Opinion and Order issued in this case on June 24, 2009, the Commission adopted the stipulation and recommendation of the parties (ESP I Stipulation) to establish AES Ohio'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.

{¶ 5} On September 4, 2013, the Commission modified and approved AES Ohio'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 AES Ohio's application to withdraw ESP II, thereby terminating it. *ESP II Case*, Finding and Order (Aug. 26, 2016). In light of AES Ohio's withdrawal of ESP II, the Commission, pursuant to R.C. 4928.143(C)(2)(b), granted AES Ohio's motion 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).

{¶ 6} The provisions, terms and conditions of ESP I remained in effect until the Commission modified and approved an amended stipulation establishing AES Ohio's third electric security plan (ESP III), effective November 1, 2017. *In re Dayton Power and Light Co.*, Case No. 16-395-EL-SSO, et al. (*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 554.

{¶ 7} 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* by eliminating AES Ohio's distribution modernization rider (DMR) 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.

{¶ 8} On November 26, 2019, AES Ohio 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). AES Ohio 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 (RESA). 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 AES Ohio's proposed tariff filing.

{¶ 9} 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 AES Ohio'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.

{¶ 10} AES Ohio timely filed its memorandum contra on February 3, 2020. On February 4, 2020, RESA filed a motion for leave to file memorandum contra instanter to the application for rehearing filed by IGS.

{¶ 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 in the matters raised in the applications for rehearing. Fourth Entry on Rehearing (Feb. 14, 2020).

{¶ 12} Meanwhile, in *In re Dayton Power and Light Co.*, Case Nos. 18-1875-EL-GRD et al., (*Quadrennial Review Case*), the signatory parties to the global stipulation submitted in that proceeding, including IEU-Ohio, IGS, Dayton/Honda, Ohio Manufacturers' Association Energy Group and Kroger, requested, on October 23, 2020, that the Commission defer ruling on the applications for rehearing filed in response to the Second Finding and Order in this proceeding. The signatory parties further represented that the applications for rehearing filed by IEU-Ohio, IGS and Dayton/Honda and the joint application for rehearing filed by OMA and Kroger will be withdrawn within seven days after the Commission issues a final appealable order which adopts, without modification, the global stipulation submitted in the *Quadrennial Review Case*.

{¶ 13} Subsequently, on June 16, 2021, the Commission issued the Fifth Entry on Rehearing in this case granting, in part, and denying, in part, OCC's application for rehearing. Fifth Entry on Rehearing (June 16, 2021). OCC and AES Ohio each filed an application for rehearing on July 21, 2021. On July 30, 2021, OCC timely filed a

memorandum contra the application for rehearing filed by AES Ohio; AES Ohio also timely filed a memorandum contra the application for rehearing filed by OCC.

{¶ 14} On August 11, 2021, the Commission denied the applications for rehearing filed by OCC and AES Ohio. Sixth Entry on Rehearing (Aug. 11, 2021). On August 27, 2021, OCC filed a notice of appeal to the Supreme Court of Ohio. AES Ohio filed a notice of cross-appeal on October 8, 2021.

{¶ 15} Subsequently, on September 10, 2021, OCC filed a notice of termination and withdrawal from the ESP I Stipulation. Further, on September 15, 2021, OCC filed a motion for a procedural schedule. AES Ohio filed a motion to strike the notice of termination and withdrawal and a memorandum contra the motion for a procedural schedule on September 30, 2022. OCC filed a reply to the memorandum contra on October 7, 2021, and a memorandum contra the motion to strike on October 15, 2021. AES Ohio filed a reply to the memorandum contra the motion to strike on October 29, 2021.

{¶ 16} Meanwhile, on June 16, 2021, the Commission adopted the global stipulation in the *Quadrennial Review Case* without modification. *Quadrennial Review Case*, Opinion and Order (Jun. 16, 2021). After rehearing, the Commission issued a final appealable order in the *Quadrennial Review Case* on December 1, 2021. *Quadrennial Review Case*, Third Entry on Rehearing (Dec. 1, 2021).

{¶ 17} On April 13, 2022, the Supreme Court of Ohio dismissed, sua sponte, OCC's appeal and AES Ohio's cross-appeal. *04/13/2022 Case Announcements*, 2022-Ohio-1156.

{¶ 18} In light of the dismissal of OCC's appeal and AES Ohio's cross-appeal, the attorney examiner finds that a prehearing conference should be held in order to discuss a procedural schedule for consideration of OCC's notice of withdrawal and termination and the scope of the hearing proposed by OCC.

{¶ 19} Accordingly, a prehearing conference should be held at 10:00 a.m., on May 3, 2022, at the offices of the Commission, 11th Floor, Hearing Room 11-A, 180 East Broad Street, Columbus, Ohio.

{¶ 20} Moreover, on October 23, 2020, in the *Quadrennial Review Case*, the signatory parties, including IEU-Ohio, IGS, Dayton/Honda, Ohio Manufacturers' Association Energy Group and Kroger requested that the Commission defer ruling on the applications for rehearing filed in response to the Second Finding and Order in this proceeding. The signatory parties further represented that the applications for rehearing filed by IEU-Ohio, IGS and Dayton/Honda and the joint application for rehearing filed by OMA and Kroger will be withdrawn if the Commission issues a final appealable order which adopts, without modification, the global stipulation submitted in the *Quadrennial Review Case*. Fifth Entry on Rehearing at ¶ 66.

{¶ 21} The Commission, in fact, adopted the global stipulation without modification on June 16, 2021, and, after rehearing, a final appealable order was issued on December 1, 2021. *Quadrennial Review Case*, Opinion and Order (Jun. 16, 2021); Third Entry on Rehearing (Dec. 21, 2021). No withdrawals of applications for rehearing have been filed since the issuance of the Third Entry on Rehearing in the *Quadrennial Review Case*. Accordingly, at the prehearing conference, counsel for IGS, Dayton, Honda and OMA, and Kroger should be prepared to update the attorney examiners regarding the status of their withdrawals of the applications for rehearing.

{¶ 22} The motion to strike OCC's notice of termination and withdrawal from the ESP I Stipulation filed by AES Ohio on November 30, 2021, will be addressed by subsequent entry.

{¶ 23} It is, therefore,

{¶ 24} ORDERED, That a prehearing conference be scheduled in accordance with Paragraph 19 of this Entry. It is, further,

{¶ 25} 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

MJA/hac

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**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 a prehearing conference should be held at 10:00 a.m., on May 3, 2022, at the offices of the Commission, 11th Floor, Hearing Room 11-A, 180 East Broad Street, Columbus, Ohio electronically filed by Heather A. Chilcote on behalf of Gregory A. Price, Attorney Examiner, Public Utilities Commission of Ohio