

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION
OF THE DAYTON POWER AND
LIGHT COMPANY D/B/A AES OHIO TO
UPDATE ITS TRANSMISSION COST
RECOVERY RIDER–NONBYPASSABLE.

CASE NO. 22-152-EL-RDR

FINDING AND ORDER

Entered in the Journal on May 18, 2022

I. SUMMARY

{¶ 1} The Commission approves the amended application filed by The Dayton Power and Light Company d/b/a AES Ohio to update its transmission cost recovery rider–nonbypassable, subject to Staff’s recommendations.

II. DISCUSSION

{¶ 2} 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.

{¶ 3} R.C. 4928.141 mandates that an electric distribution utility shall provide a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services, including a firm supply of electric generation services, to all consumers within its certified territory. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) under R.C. 4928.143.

{¶ 4} By Opinion and Order issued on June 24, 2009, the Commission approved a stipulation and recommendation to establish AES Ohio’s first ESP (ESP I). *In re The Dayton Power and Light Co.*, Case No. 08-1094-EL-SSO, et al. (*ESP I Case*), Opinion and Order (June 24, 2009). Later, on December 19, 2012, the Commission continued ESP I until a subsequent SSO could be authorized. *ESP I Case*, Entry (Dec. 19, 2012) at 3-5.

{¶ 5} On September 4, 2013, the Commission modified and approved the Company's application for a second ESP (ESP II), including implementation of a nonbypassable transmission cost recovery rider (TCRR-N) beginning January 1, 2014. *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) at 36. The TCRR-N was designed to recover transmission-related costs imposed on or charged to the Company by the Federal Energy Regulatory Commission (FERC) or PJM Interconnection, LLC (PJM).

{¶ 6} On June 20, 2016, the Supreme Court of Ohio issued an opinion reversing the Commission's decision 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. Subsequently, on August 26, 2016, the Commission modified ESP II pursuant to the Court's remand and then granted the Company's application to withdraw ESP II, thereby terminating it. *ESP II Case*, Finding and Order (Aug. 26, 2016). The Commission contemporaneously granted the Company's application to implement the provisions, terms, and conditions of ESP I, as its most recent SSO, pursuant to R.C. 4928.143(C)(2)(b). *ESP I Case*, Finding and Order (Aug. 26, 2016), Third Entry on Rehearing (Dec. 14, 2016). Upon finding that the elimination of the TCRR-N (and its bypassable counterpart) would unduly disrupt both the competitive bidding process supplying the SSO and individual customer contracts with competitive retail electric service (CRES) suppliers, however, the Commission concluded that the TCRR-N should be continued as part of ESP I. *ESP I Case*, Finding and Order (Aug. 26, 2016) at ¶ 24, 28, Third Entry on Rehearing (Dec. 14, 2016) at ¶ 22-24.

{¶ 7} Due to events surrounding AES Ohio's subsequent proceeding for its third ESP (ESP III), the Company is currently operating under ESP I. *See 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*), Notice of Withdrawal (Nov. 26, 2019); *ESP III Case* Finding and Order (Dec. 18, 2019); *ESP I Case*, Proposed Revised Tariffs (Nov. 26, 2019); *ESP I Case*, Second Finding and Order (Dec. 18, 2019); *ESP I Case*, Sixth Entry on Rehearing (Aug.

11, 2021). Relevant to this proceeding, in the Second Finding and Order issued on December 18, 2019, in the *ESP I Case*, the Commission noted and confirmed that, pursuant to its August 26, 2016 Finding and Order, the TCRR-N continues as a provision, term, and condition of ESP I, as it was in effect prior to ESP III. *ESP I Case*, Second Finding and Order (Dec. 18, 2019) at ¶ 28, 42, 44. Accordingly, the TCRR-N, including an Opt-Out Pilot Program (Pilot Program)¹, remains part of the Company's tariffs.

{¶ 8} On March 15, 2022, pursuant to R.C. 4928.05(A)(2) and Ohio Adm.Code 4901:1-36-03(B), AES Ohio filed an application to update its TCRR-N rates effective on a bills-rendered basis beginning June 1, 2022. Therein, the Company informs the Commission that, on April 15, 2021, FERC approved a settlement in the Company's March 2020 application for a formula rate, which rate the Company has been recovering since May 2020. Further, and consistent with the Commission's orders in the Company's previous TCRR-N proceedings, AES Ohio states that it will continue to pass through to customers the Regional Transmission Expansion Program credits resulting from a FERC settlement (FERC Case No. EL-05-121-009). Continuing, the Company asserts that the TCRR-N revenue requirement is lower for the current period (June 2022 through May 2023) than it was for the previous period, primarily because the under-collection balance that was prominent in the Company's 2021 TCRR-N filing has been remedied.

{¶ 9} On March 24, 2022, AES Ohio filed a corrected Schedule B-3, Summary of Current and Proposed Rates, and a corrected Schedule B-4, Typical Bill Comparison for the Company's TCRR-N. The Company states that the corrected schedules addressed minor

¹ The Pilot Program was originally approved as part of the Company's ESP III; through the Pilot Program, participating customers could opt out of the TCRR-N and, instead, purchase transmission services directly from a certified CRES provider. *ESP III Case*, Opinion and Order (Oct. 20, 2017) at ¶ 14, 62. After AES Ohio reverted to ESP I, the Commission approved a settlement through which the Company would re-open enrollment for the Pilot Program to certain parties with a target goal of 50 participating manufacturers. *In the Matter of the Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid*, Case No. 18-1875-EL-GRD, et al., Opinion and Order (June 2, 2021) at ¶ 42.

errors relating to only Secondary Class and have no impact on the proposed revenue requirement or tariffs.

{¶ 10} On March 29, 2022, and April 14, 2022, respectively, Ohio Consumers' Counsel (OCC) and Interstate Gas Supply, Inc. (IGS) moved to intervene. OCC moves to intervene on behalf of AES Ohio's residential customers and asserts entitlement to intervention under R.C. 4903.221 and Ohio Adm.Code 4901-1-11. IGS also submits that it qualifies for intervention under the relevant rule and statute, stating that it has a real and substantial interest in the proceeding that is not represented by any other party. IGS additionally explains that the outcome of this proceeding could impact the way that IGS conducts business in the AES Ohio service territory, as the Pilot Program impacts commercial and industrial customers that opt-out and pay transmission charges directly to their supplier. Neither motion is opposed. Upon review, the Commission finds that the motions to intervene are reasonable and should be granted.

{¶ 11} On April 25, 2022, OCC filed comments regarding the application.² OCC is concerned about the cost shifting that could result from the Pilot Program and makes several recommendations it believes are necessary to protect consumers. OCC points out that it raised concerns during the creation of the Pilot Program, leading the Commission to direct the Company and Staff to continuously review the results of the program and periodically report their findings to the Commission. *ESP III Case*, Opinion and Order (Oct. 20, 2017) at ¶ 61-62. OCC complains that Staff's filed reports in previous TCRR-N update cases have done little to update the Commission. OCC thus requests that the Commission order a formal review of the Pilot Program like that recently undertaken for the FirstEnergy utilities' transmission rider. OCC notes that there is a single participant in AES Ohio's Pilot Program, which may render a review superfluous to some, but maintains that the one participant can still provide valuable insight as to whether the program is providing sufficient and reliable

² IGS did not file comments.

data demonstrating benefits to non-participating customers and whether the program should continue.

{¶ 12} OCC additionally recommends that the Commission order AES Ohio to report on supplemental transmission projects and cost impacts to customers. OCC states that supplemental transmission projects with PJM are not required for compliance with system reliability, operational performance, or economic criteria; nor are the projects reviewed or approved by PJM, by FERC, or by the Commission. Instead, OCC characterizes the projects as having found a regulatory loophole being exploited by transmission owners. OCC asserts that consumers should have some protection from rising transmission costs. As such, OCC submits that, in the absence of any other regulatory oversight, the Commission should require AES Ohio to report the impact on customers of all supplemental transmission project costs it is passing through on consumer bills.

{¶ 13} On April 29, 2022, AES Ohio filed an amended application to update the TCRR-N (Amended Application). The Company explains that the Amended Application corrects minor errors on Workpaper C-1c, resulting in a \$356,338 decrease in the revenue requirement. Additionally, the Amended Application incorporates the refund associated with the 50-basis point return on equity adder that was ordered by FERC's July 15, 2021 Order on Paper Hearing and the February 17, 2022 Order Addressing Arguments Raised on Rehearing in Case No. ER20-1068-000 into the revenue requirement. The impact of the refund, the amount of which was not known at the time of the original application, reduces the revenue requirement by an additional \$185,753. Thus, with the Amended Application, the total revenue requirement is adjusted down by \$542,091. As a result, AES Ohio asserts that a typical residential customer using 1000 kilowatt hours per month can expect a decrease of \$1.67.

{¶ 14} On May 6, 2022, Staff filed its review and recommendation regarding AES Ohio's combined filings to update the TCRR-N. Staff states that it conducted its review through a combination of document review, interviews, and interrogatories; and, for the

audit period February 2021 through January 2022, Staff requested documentation as needed to determine that the costs were substantiated and jurisdictional or to conclude that an adjustment was warranted. Staff confirms that it continued to review certain charges identified in the Company's last annual update, Case No. 21-224-EL-RDR, including operating reserves. Staff states that it found the charges are not unreasonable. As to the Pilot Program, Staff indicates there are currently two customers enrolled. Staff describes the Pilot Program as allowing the customer or their CRES provider to be billed direct for certain costs based on the customer's Network Service Peak Load (NSPL) as opposed to through the TCRR-N based on monthly metered billing demand. Staff explains that this provides an opportunity for participating customers to control their transmission-related costs by controlling their NPSL. Given that the Pilot Program involves only two participants, Staff does not believe that an extensive study of the program is necessary or valuable at this time. Staff represents that a study of the Pilot Program would be performed in the future if the number of participants increases to a level where a study would provide meaningful results.

{¶ 15} Ultimately, Staff recommends that AES Ohio's Amended Application filed April 29, 2022, be approved and become effective on a bills rendered basis beginning on June 1, 2022.

{¶ 16} Upon review of the application materials, OCC's April 25, 2022 comments, and Staff's May 6, 2022 review and recommendation, the Commission finds that AES Ohio's Amended Application does not appear to be unjust or unreasonable. At this time, we decline OCC's suggestion to require the Company to report customer impacts of all supplemental transmission project costs. We further decline to order a formal review of the Pilot Program. Despite OCC's insistence that the small number of participants in the program is not an obstacle to a fruitful study, the Commission agrees with Staff that an extensive study of the Pilot Program would provide meaningful results only if the number of participants increases. The Commission notes that enrollment for the Pilot Program was reopened with a target goal of 50 participating manufacturers. *In the Matter of the Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid*, Case No.

18-1875-EL-GRD, et al., Opinion and Order (June 2, 2021) at ¶ 42. While there is no magic number of participants that would trigger the study proposed by OCC, the Commission finds that a participation rate that is 4 percent of the target is a less than ideal sample with which to conduct a study that will generate meaningful results.

{¶ 17} Accordingly, the Commission finds that AES Ohio's April 29, 2022 Amended Application to update the TCRR-N does not appear to be unjust or unreasonable and should be approved effective June 1, 2022. Further, at this time, the Commission finds that it is not necessary to hold a hearing.

III. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That AES Ohio's Amended Application to update the TCRR-N be approved as set forth in this Finding and Order. It is, further,

{¶ 20} ORDERED, That the motions to intervene filed by OCC and IGS be granted. It is, further,

{¶ 21} ORDERED, That AES Ohio is authorized to file revised tariffs, in final form, consistent with this Finding and Order. AES Ohio shall file one copy in this docket and one copy in its TRF docket. It is, further,

{¶ 22} ORDERED, That the effective date of the new tariffs shall be June 1, 2022. It is, further,

{¶ 23} ORDERED, That AES Ohio shall notify all affected customers regarding the revised tariffs via a bill message, via a bill insert, or via a separate mailing within 30 days of the effective date of the tariffs. A copy of the customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least 10 days prior to its distribution to customers. It is, further,

{¶ 24} ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rules, or regulation. It is, further,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

PAS/hac

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Case No(s). 22-0152-EL-RDR

Summary: Finding & Order approving the amended application filed by The Dayton Power and Light Company d/b/a AES Ohio to update its transmission cost recovery rider–nonbypassable, subject to Staff’s recommendations electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio