

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

SEVENTH ENTRY ON REHEARING

Entered in the Journal on June 15, 2022

I. SUMMARY

{¶ 1} In this Seventh Entry on Rehearing, the Commission finds that the application for rehearing filed by Industrial Energy Users-Ohio and the joint applications for rehearing filed by the City of Dayton and Honda of America Mfg., Inc., as well as by Ohio Manufacturers' Association and The Kroger Co., should be deemed withdrawn. Further, the Commission finds that the compliance tariffs filed by The Dayton Power and Light Company d/b/a AES Ohio should be approved. Finally, the Commission finds that the Ohio Consumers' Counsel's motion for a stay should be granted and that all further proceedings in these cases should be stayed until otherwise ordered by the Commission.

II. HISTORY OF THE PROCEEDING

{¶ 2} 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.

{¶ 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 (MRO) in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} 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.

{¶ 5} 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.

{¶ 6} 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).

{¶ 7} 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.

{¶ 8} 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.

{¶ 9} 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 (Dayton) and Honda of America Mfg., Inc. (Honda) (together Dayton/Honda). Further, Ohio Consumers' Counsel (OCC), Ohio Manufacturers' Association (OMA) and The Kroger Co. (Kroger) jointly filed a motion on December 4, 2019, seeking rejection of AES Ohio's proposed tariff filing.

{¶ 10} 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, separate applications for rehearing were filed by IEU-Ohio, IGS, and OCC, while joint applications for rehearing were filed by Dayton/Honda and by OMA and Kroger (together OMA/Kroger).

{¶ 11} 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 instant to the application for rehearing filed by IGS.

{¶ 12} 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 to allow for further consideration of the matters raised in the applications for rehearing. Fourth Entry on Rehearing (Feb. 14, 2020).

{¶ 13} 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, 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 application for rehearing filed by IEU-Ohio and the joint applications for rehearing filed by Dayton/Honda and OMA/Kroger will be withdrawn within 7 days after the Commission issues a final appealable order which adopts, without modification, the global stipulation submitted in the *Quadrennial Review Case*.

{¶ 14} 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 of the Fifth Entry on Rehearing. 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.

{¶ 15} 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, AES Ohio filed a notice of cross-appeal on October 8, 2021, of the Sixth Entry on Rehearing in these proceedings.

{¶ 16} 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.

{¶ 17} 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).

{¶ 18} On April 13, 2022, the Supreme Court of Ohio dismissed, sua sponte, OCC's appeal and AES Ohio's cross-appeal of the Sixth Entry on Rehearing in these proceedings. *04/13/2022 Case Announcements*, 2022-Ohio-1156.

III. DISCUSSION

A. *The Applications for Rehearing Should be Deemed Withdrawn.*

{¶ 19} As noted above, on October 23, 2020, in *In re Dayton Power and Light Co.*, Case Nos. 18-1875-EL-GRD et al., (*Quadrennial Review Case*), the signatory parties, including IEU-Ohio, 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 application for rehearing filed by IEU-Ohio and the joint applications for rehearing filed by Dayton/Honda and OMA/Kroger will be withdrawn if the Commission issues a final appealable order that adopts, without modification, the global stipulation submitted in the *Quadrennial Review Case*. Fifth Entry on Rehearing at ¶ 66.

{¶ 20} As also noted above, 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).

{¶ 21} At a prehearing conference held on May 3, 2022, in this proceeding, the attorney examiners requested that IEU-Ohio, Dayton/Honda, and OMA/Kroger provide an update regarding the status of their withdrawals of the applications for rehearing. On May 4, 2022, IEU-Ohio and Dayton/Honda filed notices of withdrawal of their applications for rehearing; further, OMA/Kroger filed a notice of withdrawal of their joint application for rehearing on May 6, 2022.

{¶ 22} Accordingly, the Commission finds that the notices to withdraw the application for rehearing filed by IEU-Ohio and the joint applications for rehearing filed by Dayton/Honda and by OMA/Kroger should be accepted, and the applications for rehearing should be deemed withdrawn.

B. The Compliance Tariffs Filed by AES Ohio Should be Approved.

{¶ 23} On July 16, 2021, AES Ohio filed compliance tariffs in response to the Commission's directive in the Fifth Entry on Rehearing. Fifth Entry on Rehearing at ¶ 61-64. The Commission finds that the compliance tariffs are consistent with the Fifth Entry on Rehearing, do not appear to be unjust and unreasonable, and should be approved. Further, the Commission finds that it is not necessary to hold a hearing regarding the compliance tariffs.

C. OCC's Request for a Stay Should be Granted.

{¶ 24} Further, on May 13, 2022, OCC filed a motion for a stay. OCC represents that it has filed a motion for reconsideration regarding the Supreme Court's decision to dismiss the appeal filed by OCC on August 27, 2021. OCC requests that these proceeding be stayed until the Supreme Court issues a final ruling on OCC's appeal of the Sixth Entry on Rehearing and until the Commission issues an order in AES Ohio's pending base distribution rate case, *In the Matter of the Application of The Dayton Power and Light Company to Increase Its Rates for Electric Distribution*, Case Nos. 20-1651-EL-AIR, et al. No party opposed the motion for a stay. The Commission finds that the motion is reasonable and

should be granted. Accordingly, all further proceedings in these cases will be stayed until otherwise directed by the Commission.

{¶ 25} The Commission notes that 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.

IV. ORDER

{¶ 26} It is, therefore,

{¶ 27} ORDERED, That the notices to withdraw the application for rehearing filed by IEU-Ohio and the joint applications for rehearing filed by Dayton/Honda and by OMA/Kroger be accepted and that the applications for rehearing and the joint application for rehearing be deemed withdrawn. It is, further,

{¶ 28} ORDERED, That AES Ohio be authorized to file, in final form, two complete copies of final tariffs, consistent with this Seventh Entry on Rehearing. AES Ohio shall file one copy in its TRF docket and one copy in this case docket. It is, further,

{¶ 29} ORDERED, That the final tariffs shall be effective upon filing. It is, further,

{¶ 30} ORDERED, That nothing in this Seventh Entry on Rehearing shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 31} ORDERED, That OCC's motion for a stay filed on May 13, 2022, be granted and that all further proceedings in these cases be stayed until otherwise directed by the Commission. It is, further,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Daniel R. Conway

Dennis P. Deters

Recusal:

Lawrence K. Friedeman

GAP/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: Entry on Rehearing finding that the application for rehearing filed by Industrial Energy Users-Ohio and the joint applications for rehearing filed by the City of Dayton and Honda of America Mfg., Inc., as well as by Ohio Manufacturers' Association and The Kroger Co., should be deemed withdrawn. Further, the Commission finds that the compliance tariffs filed by The Dayton Power and Light Company d/b/a AES Ohio should be approved. Finally, the Commission finds that the Ohio Consumers' Counsel's motion for a stay should be granted and that all further proceedings in these cases should be stayed until otherwise ordered by the Commission electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio