

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
THE DAYTON POWER AND LIGHT
COMPANY D/B/A AES OHIO FOR
AUTHORITY TO RECOVER CERTAIN
STORM-RELATED SERVICE
RESTORATION COSTS.

CASE NO. 21-92-EL-RDR

ENTRY ON REHEARING

Entered in the Journal on July 13, 2022

I. SUMMARY

{¶ 1} In this Entry on Rehearing, the Commission denies the application for rehearing filed by the Dayton Power & Light Company d/b/a AES Ohio.

II. PROCEDURAL HISTORY

{¶ 2} The Dayton Power & Light Company d/b/a AES Ohio (AES Ohio or the Company) is a public utility and an electric distribution utility (EDU) as defined in R.C. 4905.02 and R.C. 4928.01, respectively. Therefore, AES Ohio is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an 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.

{¶ 4} On October 20, 2017, the Commission approved and adopted a contested stipulation (Stipulation) establishing AES Ohio's third ESP (ESP III). *In re The Dayton Power and Light Co.*, Case No. 16-395-EL-SSO, et al. (ESP III Case), Opinion and Order (Oct. 20, 2017). As part of ESP III, the Commission approved the creation of a nonbypassable Storm Cost Recovery Rider (SCRR) through which AES Ohio could recover operating and maintenance (O&M) expenses incurred from storms that are determined to be "Major Events" as defined by Ohio Adm.Code 4901:1-10-01. As part of the SCRR established in the

adopted Stipulation, carrying charges at the last approved cost of debt would accrue from the point of deferral until recovery begins. Additionally, the Company was required to file its SCRR by April 1 of each year, and Staff was to complete its audit with the Commission's approval for rates to be effective around August 1 of each year.

{¶ 5} On November 26, 2019, AES Ohio filed a notice of withdrawal of its application for ESP III under R.C. 4928.143(C)(2)(a). *ESP III Case*, Notice of Withdrawal (Nov. 26, 2019). Additionally, citing to R.C. 4928.143(C)(2)(b), the Company filed proposed revised tariffs seeking to implement its most recent SSO, which was its first ESP (ESP I). *In re Application of The Dayton Power and Light Co.*, Case No. 08-1094-EL-SSO (*ESP I Case*), Proposed Revised Tariffs (Nov. 26, 2019). On December 18, 2019, the Commission issued a Finding and Order approving AES Ohio's withdrawal of its application, thereby terminating ESP III. *ESP III Case*, Finding and Order (Dec. 18, 2019).

{¶ 6} Also on December 18, 2019, the Commission issued a Second Finding and Order approving, with modifications, AES Ohio's proposed revised tariffs to continue the provisions, terms, and conditions of ESP I. *ESP I Case*, Second Finding and Order (Dec. 18, 2019). Although AES Ohio was ordered to modify the proposed revised tariffs to remove provisions for certain riders that were not a provision, term, or condition of ESP I, the Commission noted that the stipulation adopted in the *ESP I Case* contained placeholders permitting the Company to seek approval of an SCRR. Therefore, the Commission found that the SCRR was authorized by ESP I, independent of ESP III, and should be continued. *ESP I Case*, Second Finding and Order (Dec. 18, 2019) at ¶ 39. Accordingly, the SCRR remains as one of AES Ohio's electric distribution service tariffs.

{¶ 7} Prior to this proceeding, AES Ohio's most recent application to update the SCRR was made in 2019. The Commission issued a Finding and Order approving that application, subject to Staff's recommended adjustments, on October 23, 2019. *In re Dayton Power and Light Co.*, Case No. 19-662-EL-RDR (*2019 SCRR Case*), Finding and Order (Oct. 23, 2019). The Company did not file an application to update the rider in 2020.

{¶ 8} On May 24, 2021, AES Ohio filed an application to recover O&M expenses, with carrying charges, incurred for 2018 and 2019 storms that qualified as Major Events under Ohio Adm.Code 4901:1-10-01 (Application).

{¶ 9} On June 21, 2021, Ohio Consumers' Counsel (OCC) filed a motion to intervene on behalf of AES Ohio's residential customers.

{¶ 10} On December 7, 2021, Staff filed a review and recommendation regarding the Application (Staff Report). Therein, Staff found that the carrying charges proposed for recovery were higher than normal due to the delayed filing of the Application and, therefore, recommended denial of carrying charges on incremental storm restoration costs totaling \$1,106,774. Staff further recommended that carrying charges only accrue based on the unrecovered monthly balances of storm restoration costs attributable to prior SCRR cases, without compounding; the adjustment added \$239,787 to the revenue requirement. Staff otherwise concluded that AES Ohio appropriately included in the SCRR only those restoration costs incurred due to major storms in Ohio. Accordingly, Staff recommended approval of the Application subject to its recommendations regarding carrying charges.

{¶ 11} On February 18, 2022, AES Ohio filed comments urging the Commission to reject Staff's recommendation and instead allow the Company to recover the full amount of carrying charges included in the Application, deeming them appropriate and consistent with the Commission's treatment of such charges in previous SCRR update cases.

{¶ 12} On March 31, 2022, OCC filed reply comments urging the Commission to reject AES Ohio's request to collect applied for carrying charges, which OCC labeled as unjust and unreasonable.

{¶ 13} By Finding and Order issued May 18, 2022, the Commission approved the Company's Application, subject to Staff's recommendation regarding carrying costs. Specifically, the Commission concluded that it would be unjust and unreasonable to permit the Company to recovery the full amount of carrying charges reflected in the Application

and, instead, adopted Staff's recommendation that carrying charges only accrue, without compounding, based on unrecovered monthly balances of storm restoration costs attributable to prior SCRR cases.

{¶ 14} Pursuant to R.C. 4903.10, any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days after the Commission's order is journalized.

{¶ 15} On June 17, 2022, AES Ohio filed an application for rehearing of the Commission's May 18, 2022 Finding and Order. OCC filed a memorandum contra the Company's application for rehearing on June 27, 2022

III. DISCUSSION

A. *AES Ohio's Application for Rehearing*

{¶ 16} AES Ohio asserts that the Commission's Finding and Order unreasonably disallowed the recovery of all carrying charges relating to the Company's incremental storm restoration costs. AES Ohio submits that, instead, the Commission should have allowed recovery of carrying charges on those storm restoration costs over a reasonable period. The Company believes the Commission denied recovery of the carrying charges because AES Ohio did not file its application within the period contemplated by the now defunct ESP III and, thus, acted erroneously.

{¶ 17} AES Ohio contends that the Commission misconstrued the Company's citation to its three most recent SCRR updates, which it made to support the proposition that the recovery of carrying charges associated with storm restoration is appropriate and consistent with Commission precedent, as actually relying upon ESP III as the basis for such recovery. In its application for rehearing, AES Ohio clarifies that its argument was not that ESP III requires recovery of carrying charges in this proceeding; rather, its contention is simply that recovery of carrying charges is otherwise consistent with Commission precedent. Here, AES Ohio again cites to its three most recent updates, another EDU's storm

rider, and its own statement that carrying charges are “inherently ‘the cost of storm damage’ under ESP I” and reasonable to recover. Application for Rehearing (AFR) at p. 4-5. AES Ohio further posits that the Commission erroneously penalized the Company for not filing its application by the April 1 deadline imposed by ESP III.

{¶ 18} Continuing, AES Ohio states that it does not dispute the Commission’s authority under ESP I to require regular SCRR updates to avoid excessive accrual of carrying charges. The Company nevertheless avers that it was unreasonable for the Commission to deny recovery of all carrying charges relating to the storms at issue in this case just because there was some delay in filing the Application. AES Ohio asserts that the Commission relied on the *2019 SCRR Case* for “the continuing vitality of [an] April 1 deadline.” AFR at 5. The Company contends that, while it may have been under an obligation to file its SCRR by April 1 at the time the Commission issued its Finding and Order in the *2019 SCRR Case*, any such obligation was terminated along with ESP III. Therefore, AES Ohio maintains that the *2019 SCRR Case* did not impose any ongoing, independent obligation for the Company to update its SCRR by a particular date.

{¶ 19} Regardless, AES Ohio refers to the timing under ESP III to illustrate its argument that the Commission erred in denying all carrying charges relating to the Company’s incremental storm restoration costs. Under ESP III, for example, the Company would have filed its annual update on or before April 1 with the expectation that the Commission would approve any update around August 1 of each year. AES Ohio submits that, under a scenario where the Company had commenced this proceeding on April 1, 2020, and the Commission had ruled on the application by August 1, 2020—a passage of four months—then accrued, and presumably recoverable, carrying charges would have been \$670,047. AFR at WP-1. The Company notes, however, that the actual time between SCRR applications and decisions has ranged from six to 12 months.

{¶ 20} In short, AES Ohio argues that the Commission erred in disallowing the recovery of all carrying charges and, instead, should have allowed the recovery of such charges on the O&M costs over a reasonable period.

B. *Memorandum Contra Rehearing*

{¶ 21} OCC contends that AES Ohio, intentionally or not, failed to timely apply to update its rider charges as ordered by the Commission in the *2019 SCRR Case*. OCC faults the Company for waiting almost two and a half years after it incurred the costs associated with 2018 storms before seeking recovery through the rider, all the while charging consumers interest through the carrying charges. OCC argues that consumers should be protected from paying over \$1.1 million in unjust and unreasonable carrying charges and, thus, urges the Commission to reject AES Ohio's argument on rehearing.

{¶ 22} OCC asserts that the Commission ordered AES Ohio to file an annual application in the *2019 SCRR Case*, that AES Ohio failed to do so despite admonitions regarding the timing of the Company's application in the *2019 SCRR Case*, and that the Commission properly held AES Ohio accountable for its failure by disallowing the disputed, applied-for carrying charges in this proceeding. OCC argues that, with the application for rehearing, AES Ohio asks the Commission to excuse the Company's failure and award it carrying charges as if it had complied with the Commission's previous order. To do so, warns OCC, will encourage non-compliance and reward utilities' failures to comply with Commission requirements and orders.

{¶ 23} OCC further takes issue with AES Ohio's WP-1 attached as Exhibit A to the application for rehearing. OCC claims that WP-1 constitutes new evidence purportedly demonstrating what carrying charges would have been had the Company complied with the Commission's annual filing requirement. OCC argues that WP-1 should not be considered because additional evidence can be taken on rehearing only if the same could not have been offered, with reasonable diligence, at the original hearing. R.C. 4903.10(B). Here, OCC alleges that AES Ohio has not shown that the evidence it now wants the

Commission to consider could not have been presented earlier. OCC further argues that WP-1 constitutes hearsay because the data included were never subject to challenge or verification. Accordingly, OCC contends that the Commission should reject AES Ohio's improper attempt to supplement the record with WP-1.

{¶ 24} In conclusion, OCC urges the Commission to affirm its Finding and Order and deny AES Ohio's application for rehearing requesting the allowance of carrying charges on the Company's tardy application to update the SCRR.

IV. CONCLUSION

{¶ 25} The Commission is unpersuaded by AES Ohio's application for rehearing.

{¶ 26} Contrary to the Company's understanding, while ESP III did serve as a touch point in the Commission's May 18, 2022 Finding and Order, as well as in AES Ohio's comments, our decision to disallow the disputed carrying costs is not based on ESP III. Instead, that decision is based firmly upon AES Ohio's failure to timely seek recovery of 2018 and 2019 storm-related O&M expenses through an update to the SCRR, a failure that permitted carrying costs to continue to accrue and accumulate to unjust and unreasonable amounts.

{¶ 27} AES Ohio states that it does not rely on ESP III for its claimed entitlement to carrying charges, instead arguing that recovery of carrying charges associated with storm restoration is consistent with Commission precedent. Here, AES Ohio points to specific Commission precedent: its three most recent SCRR updates, an update to Duke Energy Ohio, Inc.'s distribution storm rider, and its own reading of ESP I. The Company, however, glosses over the fact that the storm rider precedent stems from cases arising from stipulations that specifically provided for the recovery of carrying costs. *ESP III Case*, Opinion and Order (Oct. 20, 2017) at ¶ 14; *In re Duke Energy Ohio, Inc.*, Case No. 17-1263-EL-SSO, et al., (*Duke ESP Case*) Opinion and Order (Dec. 19, 2018) at ¶ 126-127. Not coincidentally, those stipulations also required that the respective EDU file an annual

application to adjust the rider. *ESP III Case*, Opinion and Order (Oct. 20, 2017) at ¶ 14; *Duke ESP Case*, Opinion and Order (Dec. 19, 2018) at ¶ 127. Furthermore, while AES Ohio claims that “[c]arrying charges are inherently ‘the cost of storm damage’ under ESP I,”¹ ESP I did not contemplate carrying charges in connection to the cost of storm damage. Instead, ESP I specified that carrying charges would be applied to any over- or under-recovery for the infrastructure investment rider, the energy efficiency rider, and the alternative energy rider; as to any storm rider, ESP I stated only that distribution base rates would be frozen subject to the Company’s right to apply to the Commission for approval of a separate rider to recover “the cost of storm damage.” *ESP I Case*, Opinion and Order (June 24, 2009) at p. 5-6. The precedent AES Ohio cites to does not support its claim of error.

{¶ 28} AES Ohio states that it does not dispute the Commission’s authority to impose a deadline for regular SCRR updates, but merely disputes that the deadline in ESP III was operative for this proceeding. AFR at p. 5, fn. 5. However, the Commission did not, as the Company argues, deny AES Ohio’s recovery of carrying charges because AES Ohio did not file its application for recovery within the period contemplated by ESP III. The Commission simply pointed to the timeframe for the SCRR as set forth in ESP III as a reasonable one to use in evaluating and rejecting AES Ohio’s claim that Staff’s recommendation was faulty for not identifying when the application should have been filed to be considered timely. To be clear, the Commission finds it reasonable to require AES Ohio to annually file any application to update its SCRR for that application to be deemed timely. Furthermore, this is not an arbitrarily concocted requirement. In fact, since the inception of the SCRR—and regardless of whether AES Ohio was operating under the rider as configured under operation of ESP I or ESP III—updates were to be filed annually. *In re Application of The Dayton Power and Light Company for Authority to Recover Certain Storm-Related Restoration Costs*, Case No. 12-3062-EL-RDR, et al., Opinion and Order (Dec. 14, 2014) at 5 (“[AES Ohio] * * * would apply a carrying charge equal to its cost of debt to any over or under recovered amount. [AES Ohio] would then file a true-up rider every December for rates effective

¹ AFR at p. 4-5.

March 1st of the following year.”); *ESP III Case*, Opinion and Order (Oct. 20, 2017) at ¶ 14 (“The Company will file yearly its SCRR by April 1 of each year * * * for rates to be effective around August 1 of each year.”).

{¶ 29} In short, AES Ohio raises no new argument or factual clarification to persuade the Commission that our original conclusions as set forth in the May 18, 2022 Finding and Order are erroneous. As such, the Commission affirms our decision that AES Ohio’s Application be approved subject to Staff’s recommendations regarding carrying charges and deny the Company’s application for rehearing.

V. ORDER

{¶ 30} It is, therefore,

{¶ 31} ORDERED, That AES Ohio’s application for rehearing be denied. It is, further,

{¶ 32} ORDERED, That a copy of this Entry on Rehearing 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). 21-0092-EL-RDR

Summary: Entry denying the application for rehearing filed by the Dayton Power & Light Company d/b/a AES Ohio electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio