

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
APPROVAL OF ITS ELECTRIC SECURITY
PLAN.

CASE NO. 22-900-EL-SSO

IN THE MATTER OF THE APPLICATION OF
THE DAYTON POWER AND LIGHT
COMPANY D/B/A AES OHIO FOR
APPROVAL OF REVISED TARIFFS.

CASE NO. 22-901-EL-ATA

IN THE MATTER OF THE APPLICATION OF
THE DAYTON POWER AND LIGHT
COMPANY D/B/A AES OHIO FOR
APPROVAL OF ACCOUNTING AUTHORITY
PURSUANT TO R.C. 4905.13.

CASE NO. 22-902-EL-AAM

ENTRY

Entered in the Journal on April 17, 2023

{¶ 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. As such, the Company is subject to the jurisdiction of this Commission.

{¶ 2} 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 to customers, including a firm supply of electric generation service, 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) in accordance with R.C. 4928.143. R.C. 4928.143(C)(1) directs that the Commission issue an order on an electric distribution utility's application for an ESP not later than 275 days after the application's filing date.

{¶ 3} On September 26, 2022, AES Ohio filed an application to establish the Company's fourth ESP along with related applications for approval of revised tariffs and for approval of accounting authority (the Application).

{¶ 4} By Entries dated September 30, 2022, and November 21, 2022, the attorney examiner established a procedural schedule for this proceeding. Pursuant to that schedule, motions to intervene were to be filed by November 28, 2022, a local public hearing was conducted on February 2, 2023, in Dayton, Ohio, and the evidentiary hearing regarding AES Ohio's Application is scheduled to commence on March 6, 2023. The schedule also set forth deadlines for discovery and for the filing of intervenor testimony.

{¶ 5} Timely motions to intervene were filed by Ohio Energy Group; Interstate Gas Supply, Inc.; University of Dayton; the Ohio Manufacturers' Association Energy Group; Industrial Energy Users-Ohio; Armada Power, LLC; Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. (collectively, Constellation); The Kroger Company (Kroger); the Citizens' Utility Board of Ohio; Ohio Partners for Affordable Energy; Ohio Consumers' Counsel (OCC); Walmart, Inc. (Walmart); ChargePoint, Inc.; the Ohio Hospital Association; the Ohio Environmental Council; the City of Dayton; One Energy Enterprises, Inc.; the Retail Energy Supply Association; and the Environmental Law & Policy Center.¹ On January 20, 2023, the attorney examiner granted all pending motions to intervene.

{¶ 6} Also on January 20, 2023, AES Ohio filed a motion for an extension of time for discovery and for intervenors to file testimony, as well as a request for an expedited ruling, in order to facilitate ongoing settlement discussions. By Entry dated January 26, 2023, the attorney examiner granted AES Ohio's motion. Pursuant to the Entry, the deadline for filing discovery requests, except notices of deposition, was extended to February 16, 2023, and intervenor testimony was extended to February 27, 2023.

¹ On April 10, 2023, the Environmental Law and Policy Center withdrew from this proceeding.

{¶ 7} Subsequently, on February 13, 2023, Staff and AES Ohio (Movants) filed a joint motion for a continuance of the evidentiary hearing, as well as an extension of the deadlines for discovery and filing intervenor testimony. Movants requested that the hearing be rescheduled to April 5, 2023, that the deadline for serving discovery requests be reset to March 1, 2023, and that the deadline for intervenors to file testimony be reset to March 15, 2023. On February 15, 2023, Kroger filed a memorandum contra the joint motion for a continuance, in which Kroger's counsel explained a scheduling conflict with Movants' proposed hearing date.

{¶ 8} By Entry issued on February 16, 2023, the attorney examiner directed that, pursuant to published notice, the evidentiary hearing be called as scheduled on March 6, 2023, and continued to April 12, 2023. Additionally, the attorney examiner directed that all discovery requests other than notices of deposition be filed by March 22, 2023, and intervenor testimony be filed by March 29, 2023.

{¶ 9} The evidentiary hearing commenced on March 6, 2023, and was immediately adjourned until April 12, 2023.

{¶ 10} On March 22, 2023, Constellation filed a motion for extension of time seeking to extend the deadline for serving discovery requests from March 22, 2023, to April 12, 2023; the deadline for filing testimony from March 29, 2023, to April 19, 2023; and the hearing date from April 12, 2023, to May 3, 2023. For cause, Constellation represented that settlement negotiations were ongoing with the prospect that a stipulation would be filed and that the requested extensions would allow parties to focus on settlement efforts.

{¶ 11} By Entry issued April 3, 2023, in consideration of a stipulation and the directive contained in R.C. 4928.143(C)(1), the attorney granted Constellation's motion and established a new procedural schedule under which testimony in support of any stipulation filed by the parties was due by April 10, 2023; testimony in opposition to such stipulation and all other intervenor testimony is due April 17, 2023; discovery requests, except for notices of depositions, should be also served by April 17, 2023; and the evidentiary hearing

is set to reconvene on May 2, 2023.² In the Entry, and in response to a statement by Constellation that an extension of deadlines would likely be needed if a joint stipulation was filed, the attorney examiner specifically noted that the new procedural schedule was sufficient to accommodate such a filing.

{¶ 12} On April 10, 2023, AES Ohio filed a joint stipulation and recommendation (Stipulation). All remaining parties except OCC are either signatory parties to the Stipulation or have signed as non-opposing parties who have agreed not to challenge the Stipulation.

{¶ 13} On April 14, 2023, OCC filed a motion for an extension of time to file testimony opposing the Stipulation and motion to shorten discovery response time, along with a request for an expedited ruling. For cause, OCC asserts that the current procedural schedule fails to provide adequate time to conduct discovery and prepare and file testimony. OCC states that it served discovery on AES Ohio for which responses are not due until three and four days after the testimony deadline. OCC maintains that it needs the discovery responses to evaluate whether the terms of the ESP as presented by the Stipulation meet the Commission's three-prong test for reasonableness. To address the alleged timing deficiencies, OCC submits that the deadline for filing testimony in opposition to the Stipulation should be extended to April 24, 2023, and that the parties should be required to respond to discovery requests within seven days. Finally, OCC represents that it cannot certify that other parties do not object to an expedited ruling.

{¶ 14} Upon receipt and review of the motion on April 14, 2023, and upon noting that OCC was unclear as to its efforts to reach out to other parties regarding their position, the attorney examiner contacted all parties via email to inquire as to whether any party intended

² On March 24, 2023, the attorney examiner notified all parties via email that the procedural dates would be vacated and reset by future entry.

to object to the motion. The attorney examiner also directed that any memoranda in opposition would be due by noon on Monday, April 17, 2023.

{¶ 15} Also on April 14, 2023, AES Ohio filed a memorandum in opposition to OCC's motion. AES Ohio represents that it does not oppose OCC's request that the Company respond within seven days to OCC's 18th and 19th sets of discovery served on April 11, 2023, and April 12, 2023, respectively, but AES Ohio would object to shortening the time period for responding to any additional requests that OCC may serve. Additionally, AES Ohio submits that the proposed April 24, 2023 testimony deadline would not allow AES Ohio sufficient time to analyze the same and depose OCC's witnesses within the same week. The Company, however, would not oppose extending the deadline for OCC to file testimony to April 21, 2023. Finally, AES Ohio suggests that, if the deadline for OCC to file testimony is extended, Staff's deadline should also be extended.

{¶ 16} In response to the attorney examiner's email inquiry, no party other than AES Ohio expressed an intent to object to OCC's motion or expedited treatment. Walmart objected to any extension of the hearing date. Staff expressed support for AES Ohio's suggestion that Staff's filing deadline also be extended. And Constellation suggested that the same date for filing apply to both intervenor testimony and testimony opposing the Stipulation. Additionally, no party other than AES Ohio filed a memorandum in opposition to OCC's motion.

{¶ 17} The attorney examiner is not entirely persuaded that OCC—the only party opposing the Stipulation—has demonstrated a lack of due process or sufficient time to present a case against the reasonableness of the Stipulation. It is evident from the procedural history of this case that the parties have been in settlement negotiations for some time. Presumably, OCC has participated in these negotiations and is aware of what terms and conditions were likely to be incorporated. Additionally, the attorney examiner's April 3, 2023 Entry made clear a reluctance to further extend deadlines in this case given the time constraints imposed by R.C. 4928.143(C)(1). However, the attorney examiner also finds

reasonable the compromise set forth by AES Ohio in its memorandum contra. Accordingly, the attorney examiner finds that OCC's motion should be granted, in part. Specifically, AES Ohio is directed to respond to OCC's discovery requests served April 11, 2023, and April 12, 2023, only, within seven days. Additionally, OCC's deadline for filing testimony in opposition to the Stipulation is extended to 5:00 p.m. on April 21, 2023. Further, all other intervenor testimony unrelated to the Stipulation should be filed by 5:00 p.m. on April 21, 2023, as well. All other dates established in the April 3, 2023 Entry remain unchanged.

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That OCC's motion the joint motion for an extension of time to file testimony opposing the Stipulation and motion to shorten discovery response time be granted to the extent stated in Paragraph 17. It is, further,

{¶ 20} 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/dmh

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in

Case No(s). 22-0900-EL-SSO, 22-0901-EL-ATA, 22-0902-EL-AAM

Summary: Attorney Examiner Entry that OCC's deadline for filing testimony in opposition to the Stipulation is extended to 5:00 p.m. on April 21, 2023. Further, all other intervenor testimony unrelated to the Stipulation should be filed by 5:00 p.m. on April 21, 2023, as well. All other dates established in the April 3, 2023 Entry remain unchanged electronically filed by Ms. Donielle M. Hunter on behalf of Patricia A. Schabo, Attorney Examiner, Public Utilities Commission of Ohio.