

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF THE  
RECONCILIATION RIDER OF THE  
DAYTON POWER AND LIGHT COMPANY.

CASE NO. 20-165-EL-RDR

### ENTRY

Entered in the Journal on August 2, 2023

{¶ 1} Dayton Power and Light Company d/b/a AES Ohio (AES Ohio or the Company) is an electric distribution utility as defined in R.C. 4928.01(A)(6) and a public utility as defined in 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 service. The SSO may be established as a market rate offer under R.C. 4928.142 or an electric security plan (ESP) under R.C. 4928.143.

#### *A. General Procedural History*

{¶ 3} On February 22, 2016, as amended on October 11, 2016, AES Ohio filed an application for its third ESP (ESP III). On October 20, 2017, the Commission issued an Opinion and Order modifying and approving an amended stipulation and establishing ESP III with an effective date of November 1, 2017. *In re the Application of The 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, et al. (*ESP III Case*), Opinion and Order (Oct. 20, 2017). As part of the approved ESP III, the Commission authorized AES Ohio to recover or credit the net proceeds of selling Ohio Valley Electric Corporation (OVEC) energy and capacity into the PJM Interconnection, LLC (PJM) marketplace and OVEC costs through a reconciliation

rider. *ESP III Case*, Opinion and Order (Oct. 20, 2017) at ¶ 14, 63, 119. The reconciliation rider became effective as part of ESP III and is subject to annual true-ups. *Id.*

{¶ 4} On September 14, 2018, in Case No. 18-1379-EL-RDR, AES Ohio filed an application to update the reconciliation rider for the period spanning November 1, 2018, through October 31, 2019. The application proposed an increased rider rate of \$0.68 per month (for a typical residential customer using 1,000 kilowatt hours) and new tariff language clarifying that the reconciliation rider is subject to reconciliation, including refunds to customers, based upon the results of audits as approved and ordered by the Commission. Ultimately, the Commission issued a Finding and Order approving the Company's application. *In re The Dayton Power and Light Co.*, Case No. 18-1379-EL-RDR, Finding and Order (Oct. 24, 2018).

{¶ 5} In July 2019, the 133rd General Assembly passed Amended Substitute House Bill Number 6 (H.B. 6), which enacted R.C. 4928.148 effective October 22, 2019. Pursuant to the new statute, on January 1, 2020, any mechanism authorized by the Commission prior to October 22, 2019, for recovery of prudently incurred costs related to a legacy generation resource—including OVEC—shall be replaced by a nonbypassable rate mechanism established by the Commission for recovery of those costs through December 31, 2030, from customers of all EDUs in Ohio. AES Ohio's reconciliation rider is subject to the new legislation and, thus, was required to be replaced by the statute's prescribed mechanism.

{¶ 6} On September 16, 2019, in Case No. 19-1776-EL-RDR, AES Ohio filed an application to update its reconciliation rider. Considering H.B. 6, the Company's application sought to update the reconciliation rider for the period November 1, 2019, through December 31, 2019, only. After evaluating the application and a September 26, 2019 review and recommendation by Staff, the Commission issued a Finding and Order approving the application to update the reconciliation rider rates effective November 1, 2019. *In re The Dayton Power and Light Co.*, Case No. 19-1776-EL-RDR, Finding and Order (Oct. 23, 2019).

{¶ 7} On November 21, 2019, the Commission established the new nonbypassable rate mechanism—the Legacy Generation Resource Rider (LGR Rider)—for recovery of legacy generation resource costs pursuant to R.C. 4928.148. *In the Matter of Establishing the Nonbypassable Recovery Mechanism for Net Legacy Generation Resource Costs Pursuant to R.C. 4928.148*, Case No. 19-1808-EL-UNC, Entry (Nov. 21, 2019). On December 27, 2019, AES Ohio filed new tariff sheets, which replaced the reconciliation rider with the LGR Rider, bearing an effective date of January 1, 2020.

### ***B. Procedural History of this Case***

{¶ 8} On January 29, 2020, the Commission issued an Entry in this docket directing Staff to issue a request for proposal (RFP) for audit services to assist with a prudency and performance audit of AES Ohio’s reconciliation rider for the period of November 1, 2018, through December 31, 2019. By Entry dated March 11, 2020, the Commission selected Vantage Energy Consulting, LLC (Vantage) to conduct the audit. Pursuant to the RFP, the final audit report was due to be filed with the Commission on September 16, 2020.

{¶ 9} On March 17, 2020, Ohio Consumers’ Counsel (OCC) filed a motion to intervene on behalf of the Company’s residential customers.

{¶ 10} On September 16, 2020, Staff filed an unopposed motion for an extension of the deadline for filing the final audit report with a request for expedited consideration of the motion.

{¶ 11} By Entry dated September 17, 2020, the attorney examiner granted both the motion to intervene filed by OCC and Staff’s motion to extend the filing deadline. The Entry extended the deadline for filing the final audit report to October 7, 2020.

{¶ 12} On October 7, 2020, Staff filed the audit report on behalf of Vantage.

{¶ 13} Also on October 7, 2020, Staff filed a motion for protective order requesting that the audit report be kept confidential pursuant to Ohio Adm.Code 4901-1-24. No person filed a memorandum contra the motion.

{¶ 14} By Entry dated November 30, 2020, the attorney examiner granted the motion for protective order with the clarification that only those portions redacted from the audit report as filed in the public record should be protected from public disclosure, not the entirety of the report. The attorney examiner additionally established a comment period.<sup>1</sup>

{¶ 15} On January 5, 2021, The Kroger Co. (Kroger) and Ohio Manufacturer's Association Energy Group (OMAEG) filed separate motions to intervene based on their status as AES Ohio customers.

{¶ 16} On January 7, 2021, OCC filed a notice to take depositions and requests for production of documents seeking discovery as to whether AES Ohio purchased and charged customers for more than the obligated amount of output from OVEC plants and the commitment of the OVEC plants into the PJM day-ahead energy market as must-run units. The notice prompted a motion to quash and a subsequent motion to compel, both of which were fully briefed.

{¶ 17} On March 17, 2021, OCC and OMAEG filed a joint notice to take depositions of certain employees of the auditor, Vantage, as well as a joint motion for waiver of Ohio Adm.Code 4901-1-16(I) to the extent necessary to allow the requested depositions. The joint notice and associated motion for waiver were subsequently withdrawn, without prejudice, on April 6, 2021.

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<sup>1</sup> In accordance with that comment schedule, OCC filed initial comments on January 5, 2021; Kroger and OMAEG, jointly, and AES Ohio filed reply comments on January 20, 2021.

{¶ 18} On November 9, 2021, OCC filed a motion for a subpoena duces tecum for a representative of OVEC to testify at, and bring specified documents to, a deposition. OCC's motion sparked three separate motions to quash, all of which were fully briefed.

{¶ 19} By Entry dated April 14, 2023, the attorney examiner: (1) granted the motions to intervene filed by Kroger and OMAEG, (2) held in abeyance any ruling on the motion to quash and motion to compel filed in response to OCC's January 7, 2021 notice to take deposition and request for production of documents served on AES Ohio, (3) denied as moot the three motions to quash regarding the OVEC subpoena, and (4) established a procedural schedule. Pursuant to that schedule, a prehearing conference would be conducted on May 18, 2023, all direct expert testimony is to be filed by August 15, 2023, and an evidentiary hearing is to commence on August 22, 2023.

{¶ 20} The prehearing conference was held as scheduled. A transcript of the conference was filed in the case docket on May 25, 2023.

{¶ 21} On July 24, 2023, the attorney examiners received an email addressed to counsel for all parties and OVEC from counsel for Staff. Therein, Staff requested a prehearing conference to discuss procedural matters.

{¶ 22} Subsequently, and having communicated with all counsel, the attorney examiners conducted a prehearing conference on July 27, 2023. The conference resulted in an agreement between all parties to continue the currently scheduled hearing date, as well as the dates for filing testimony, to a date to be determined by future entry. Counsel for Staff later contacted the attorney examiner with a hearing date agreed to by all parties.

{¶ 23} At this time, the attorney examiner reschedules the evidentiary hearing in this proceeding to commence on September 26, 2023, at 10:00 a.m., in Hearing Room 11-A, at the offices of the Commission, 180 East Broad Street, 11th Floor, Columbus, Ohio 43215. Additionally, all direct expert testimony shall be filed and served by September 12, 2023.

{¶ 24} It is, therefore,

{¶ 25} ORDERED, That the hearing in this matter be continued to September 26, 2023, at 10:00 a.m., as stated in Paragraph 23. It is, further,

{¶ 26} ORDERED, That direct expert testimony be filed by September 12, 2023, as stated in Paragraph 23. It is, further,

{¶ 27} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

*/s/Patricia A. Schabo*

By: Patricia A. Schabo  
Attorney Examiner

NJW/mef

**This foregoing document was electronically filed with the Public Utilities  
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**in**

**Case No(s). 20-0165-EL-RDR**

Summary: Attorney Examiner Entry rescheduling the evidentiary hearing for September 26, 2023 at 10:00 a.m. in Hearing Room 11-A and directing expert testimony be filed by September 12, 2023 electronically filed by Ms. Mary E. Fischer on behalf of Patricia A. Schabo, Attorney Examiner, Public Utilities Commission of Ohio.