

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE OVEC
GENERATION PURCHASE RIDER AUDITS
REQUIRED BY R.C. 4928.148 FOR DUKE
ENERGY OHIO, INC., THE DAYTON
POWER AND LIGHT COMPANY D/B/A AES
OHIO, AND OHIO POWER COMPANY
D/B/A AEP OHIO.

CASE NO. 21-477-EL-RDR

ENTRY

Entered in the Journal on December 22, 2023

{¶ 1} Duke Energy Ohio, Inc. (Duke), The Dayton Power and Light Company d/b/a AES Ohio (AES), and Ohio Power Company d/b/a AEP Ohio (AEP) (collectively, the Companies) are electric distribution utilities (EDUs), as defined by R.C. 4928.01(A)(6), and public utilities, as defined in R.C. 4905.02, and, as such, are subject to the jurisdiction of this Commission.

{¶ 2} R.C. 4928.148, which became effective on October 22, 2019, required the Commission to (1) establish a replacement nonbypassable rate mechanism for the retail recovery of prudently incurred costs related to a legacy generation resource (LGR) for the period commencing January 1, 2020 and extending up to December 31, 2030, and (2) determine the prudence and reasonableness of the actions of EDUs with ownership interests in the LGR.

{¶ 3} By Entry issued on November 21, 2019, in Case No. 19-1808-EL-UNC, the Commission established the LGR Rider 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.*

{¶ 4} In accordance with R.C. 4928.148(A)(1), the Commission is required to determine the prudence and reasonableness of the actions of EDUs with LGR ownership interests during years 2021, 2024, 2027, and 2030.

{¶ 5} To assist the Commission with the audit of the Companies' actions in regard to their LGR ownership for the period from January 1, 2020, through December 31, 2020, by Entry issued in this proceeding on May 5, 2021, the Commission directed Staff to issue a request for proposal (RFP) for audit services.

{¶ 6} On July 14, 2021, the Commission selected London Economics International LLC (LEI) as the third-party auditor to assist with the prudency and reasonableness audit.

{¶ 7} On December 17, 2021, Staff filed in this docket the LEI audit of the LGR for each of the Companies. On December 17, 2021, Staff, Duke, AES, and AEP each filed separate motions for a protective order with respect to the confidential version of LEI's audit report, claiming that the report contained highly sensitive financial information and that protection of the information is consistent with the Commission's prior actions in cases involving this type of information. No memoranda contra the motions for protective order were filed.

{¶ 8} On April 7, 2023, by Entry, the attorney examiner established deadlines for a comment period in this proceeding. Initial comments were due on May 8, 2023, and reply comments were due by May 23, 2023. Initial comments were filed by AEP, Duke, AES, Sierra Club, Ohio Environmental Council (OEC), the Office of the Ohio Consumers' Counsel (OCC), Citizens Utility Board of Ohio (CUB Ohio), Union of Concerned Scientists (UCS), and The Ohio Manufacturers' Association Energy Group (OMAEG). Reply comments were filed by AEP, Duke, AES, OCC, OMAEG, Sierra Club, CUB Ohio, UCS, and OEC.

{¶ 9} On July 7, 2023, by Entry, the attorney examiner established a procedural schedule, setting, among other things, an evidentiary hearing to commence on October 17, 2023. Further, the attorney examiner granted the unopposed motions for protective order filed by Staff and the Companies with respect to the confidential information contained in LEI's audit reports.

{¶ 10} No party filed an interlocutory appeal of the attorney examiner's July 7, 2023 Entry, including the granting of the motions for protective order.

{¶ 11} On September 1, 2023, Staff, AEP, Duke, AES, Sierra Club, OEC, OCC, CUB Ohio, UCS, the Kroger Company, Ohio Energy Leadership Council, and OMAEG (Joint Movants) filed a joint motion for a continuance of the evidentiary hearing.

{¶ 12} The attorney examiner granted the continuance request on September 11, 2023. The hearing commenced on October 31, 2023, and adjourned on November 6, 2023.

{¶ 13} During the hearing, the confidentiality status of certain information came under question. At the conclusion of the hearing, the parties agreed to confer with one another regarding some limited circumstances in which information previously considered confidential would be moved to the public domain. (Tr. Vol. V at 1370-1371.) Any other disputes were instructed to be raised in briefs.

{¶ 14} With that being said, the attorney examiner notes that it appears certain information contained in the redacted LEI audit reports is available in the public domain.¹ As noted in the July 7, 2023 Entry, the protective treatment granted to such information would apply for a period of 24 months, unless otherwise ordered. The existing protective order was granted, in part, based on the fact that the moving parties averred that the information was not available in the public domain. The Commission and, by extension, its attorney examiners retain the right to reconsider the confidential status of information presented in proceedings before the Commission when it becomes apparent that the information no longer satisfies the criteria for protective treatment, including occasions in which it is later determined that information is available in the public domain. See *In re Consolidated Duke Energy Ohio, Inc. Rate Stabilization Plan Remand and Rider Adjustment Cases*,

¹ For instance, the information contained in Figure 30 on page 55 of the LEI report conducted for AEP (Staff Ex. 4 and 5C), Figure 29 on page 52 of the AES (Staff Ex. 2 and 3C), and Figure 35 on page 57 of the LEI report conducted for Duke (Staff Ex. 6 and 7C), can be replicated utilizing public information.

Case Nos. 03-93-EL-ATA, et al., Entry (June 1, 2009). In light of the fact that certain information in this proceeding, which had previously been held under a protective order granted by the Commission, appears available in the public domain, the attorney examiner finds that it is appropriate to establish a procedure to allow the Commission to obtain and review the necessary information to modify the existing protective order in an appropriate manner.

{¶ 15} Accordingly, the attorney examiner directs the parties to object to the release of specific information contained in the LEI audit reports by December 29, 2023. Any information that is currently subject to the protective order in this case but is not identified by the moving parties will be considered by the Commission as no longer subject to the protective order and will be released to the public record at that time. Parties moving for continued protective treatment should identify, by page number, any information currently subject to the protective order in the above-captioned case that they believe should remain subject to the protective order by the Commission, as well as explain why that redacted information should continue to be held as protected by the Commission. The correspondence should also contain an attestation that the information requested to continue to be held as confidential is not otherwise publicly available. Any party may file a responsive pleading within three days of such filings. Finally, the briefing schedule previously established at the end of the hearing shall be extended by two weeks. Accordingly, the new deadlines for initial and reply briefs will be January 23, 2024, and February 12, 2024, unless otherwise ordered.

{¶ 16} Finally, as an administrative matter, the attorney examiner notes that, to the extent a party disagrees with the confidential nature of certain information to be discussed during hearing (in this case, information contained within the three LEI audit reports), the time and place to first raise an issue regarding the confidential status is not during the hearing itself. While the Commission always maintains the ability to move portions of transcripts and exhibits into the public record after a hearing has concluded, based on the facts and circumstances at hand, the more appropriate procedure is for a party to file a

memorandum contra the motion for protective order when it is initially filed or, at the very least, to file a motion requesting reconsideration of the protective treatment well before the hearing commences.² This allows for the assigned attorney examiner to address issues of confidentiality before the hearing and ensures a cleaner record for the Commission's consideration, as well as for the public to review. Further, it allows the hearing to proceed in an orderly and expeditious manner, consistent with Ohio Adm.Code 4901-1-27.

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That parties adhere to the procedure described in Paragraphs 14 and 15. It is, further,

{¶ 19} ORDERED, That the briefing schedule be extended, as described in Paragraph 15. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Megan J. Addison

By: Megan J. Addison
Attorney Examiner

JSA/dr

² The motions for protective order in this proceeding were filed in December of 2021 and were granted in July 2023, with no filings contesting the confidential nature of the information subject to those motions made in the interim or before the hearing commenced on October 31, 2023.

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in

Case No(s). 21-0477-EL-RDR

Summary: Attorney Examiner Entry ordering that parties adhere to the procedure described in Paragraphs 14 and 15 and extending the briefing schedule, as described in Paragraph 15 electronically filed by Debbie S. Ryan on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio.