

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 27, 2023

{¶ 1} Duke Energy Ohio, Inc. (Duke), The Dayton Power and Light Company d/b/a AES Ohio (AES Ohio), 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 re 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).

{¶ 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 (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 Ohio, 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 Ohio, 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 Ohio, OCC, OMAEG, Sierra Club, CUB Ohio, UCS, OMAEG, 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 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} By Entry issued December 22, 2023, the attorney examiner noted that certain information in this proceeding, which had previously been held under a protective order granted by the Commission, appeared available in the public domain. Consequently, the attorney examiner instructed the parties to object to the release of specific information contained in the LEI audit reports by December 29, 2023. The briefing schedule was also amended to accommodate the procedure set forth in the Entry.

{¶ 15} Subsequently, counsel for AEP contacted the parties and the attorney examiners, expressing concern that several necessary personnel were scheduled to be out of the office for the holidays and would be unavailable to review the information as directed before the established deadline. Based on the concerns raised by counsel, the attorney examiner finds that a brief extension is warranted. As such, the December 29, 2023 deadline will be extended to January 4, 2024. Similarly, the previously established briefing schedule shall also be extended. Accordingly, the new deadlines for initial and reply briefs will be

January 29, 2024, and February 20, 2024, respectively, unless otherwise ordered. All other aspects of the December 22, 2023 Entry shall remain in effect.

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That certain procedural deadlines be extended, as set forth in Paragraph 15. It is, further,

{¶ 18} 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

PAS/mef

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in

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

Summary: Attorney Examiner Entry extending the deadline for protective order release objections to January 4, 2024 and initial and reply briefs to January 29, 2024, and February 20, 2024, respectively. electronically filed by Ms. Mary E. Fischer on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio.