

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE JOINT
APPLICATION OF THE UNIVERSITY OF
DAYTON, TALLGRASS DAYTON
COMMUNITY POWER, LLC, AND THE
DAYTON POWER & LIGHT COMPANY
DBA AES OHIO FOR APPROVAL OF A
REASONABLE ARRANGEMENT.

CASE NO. 23-804-EL-AEC

FINDING AND ORDER

Entered in the Journal on March 20, 2024

I. SUMMARY

{¶ 1} The Commission finds that the joint application for a reasonable arrangement amongst the University of Dayton, Tallgrass Dayton Community Power, LLC, and Dayton Power and Light Company d/b/a AES Ohio is reasonable and should be approved.

II. FACTS AND PROCEDURAL HISTORY

{¶ 2} R.C. 4905.31 authorizes the Commission to approve reasonable electric services arrangements between an electric utility and a mercantile customer or group of mercantile customers. R.C. 4928.01(A)(19) defines "mercantile customer" to mean a commercial or industrial customer that consumes more than 700,000 kilowatt hours of electricity per year for nonresidential use, or the customer is part of a national account involving multiple facilities in one or more states. Ohio Adm.Code 4901:1-38-05 provides rules for the filing of applications, pursuant to R.C. 4905.31, for approval of unique arrangements that further the policy of the state of Ohio embodied in R.C. 4928.02.

{¶ 3} The Dayton Power and Light Company d/b/a AES Ohio (AES Ohio) is an electric light company, as defined by R.C. 4905.03(A)(3), and a public utility, as defined under R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 4} On August 10, 2023, the University of Dayton (University) and Tallgrass Dayton Community Power, LLC (Tallgrass) filed an application (Joint Application) for approval of a reasonable arrangement with AES Ohio (collectively, Joint Applicants) pursuant to Ohio Adm.Code Chapter 4901:1-38-05 (Arrangement).

{¶ 5} Also on August 10, 2023, the Joint Applicants filed a motion requesting that a procedural schedule be established such that it would not require a formal hearing. In its motion, the Joint Applicants also proposed dates for third-party comment filings and reply comments.

{¶ 6} On August 11, 2023, a motion to appear pro hac vice and a certificate of pro hac vice registration was filed by Mr. Trevor Alexander on behalf of Ms. Shannon P. Coleman to represent Tallgrass. No memoranda contra the motion was filed. Gov.Bar.R XII(2)(A) provides rules governing eligibility to practice pro hac vice in Ohio. Pursuant to Gov.Bar.R XII(2)(A)(7), motions for admission pro hac vice must be accompanied by a certificate of pro hac vice registration furnished by the Supreme Court Office of Attorney Services. The Commission finds that the motion is reasonable, complies with applicable requirements, and should be granted.

{¶ 7} On January 8, 2024, Staff filed its review and recommendation (Staff Report) regarding the Joint Application.

A. *Summary of the Joint Application*

{¶ 8} The Joint Applicants represent that the proposed Arrangement promotes the development of renewable energy generation in Ohio, and that they do not request to collect any costs relating to the proposed reasonable arrangement from any other customer or otherwise allocate any such costs to any other customer. The University seeks to leverage this project to promote education, research, and student involvement. The Joint Applicants represent that the Arrangement offers an opportunity for hands-on learning, as well as potential employment opportunities in the energy sector.

{¶ 9} Per the Joint Application, Tallgrass will own and operate a waste heat recovery system that uses heat from an existing natural gas compression site in AES Ohio's service territory, thereby creating a new renewable energy resource. The Joint Application explains that the Tallgrass Waste Heat Facility will capture heat from the exhaust stacks of several gas turbines that are currently in service at the existing natural gas compression site, and it will use an organic Rankine cycle system to capture wasted heat and convert it into baseload, emission-free electric power. Under the proposed Arrangement, AES Ohio will purchase output from Tallgrass Waste Heat Facility at a fixed rate price for a 15-year term to serve the load to the University without seeking cost recovery of any kind for such output from other AES customers. The Joint Applicants explain that since there is no applicable distribution rate for this proposed transaction, Tallgrass will compensate AES Ohio for delivering the power by paying a rate equal to AES Ohio's Wholesale Distribution Charge delineated in its transmission formula rate set forth in the Open Access Transmission Tariff of PJM Interconnection, LLC. Per the Joint Applicants, this structure will ensure that AES Ohio is adequately compensated for the services it provides so that other customers are not asked to bear the costs associated with this transaction. Relatedly, under the Arrangement, the output of the Tallgrass Waste Heat Facility would flow through the JB1202 circuit, which is unable to handle as much load as AES Ohio's standard 477 kcmil distribution circuit. As a result, AES Ohio commits to prioritize an upgrade of the JB1202 circuit to its standard 477 kcmil design to accommodate the anticipated increase in load. Further, AES Ohio would recover the cost of this circuit upgrade in the same way as it does for all of its load serving circuits by including the cost of the circuit upgrade in a distribution case or applicable rider without additional assessment to Tallgrass or the University. Also under the Arrangement, AES Ohio would provide transmission benefits to the University through the Transmission Cost Recovery Rider Opt-Out Pilot Program as authorized by the Commission under Case No. 18-1875-EL-GRD, et. al. *See In re The Dayton Power and Light Co.*, Case Nos. 18-1875-EL-GRD, et. al, Opinion and Order, (June 16, 2021). Lastly, the Joint Applicants clarify that under the proposed terms, other customers would not bear any of the costs associated with the Settlement.

{¶ 10} The Joint Applicants represent that the adoption of the Arrangement would advance the State of Ohio's energy policy and provide another structure for advanced energy within Ohio as described in R.C. 4928.02. Per the Joint Applicants, this reasonable arrangement is in the public interest because it will ensure the availability of reasonably priced retail electric service by enabling AES Ohio and the University to enter into a mutually agreeable contract that will provide the University with reasonably priced retail electric service that advances the University's sustainability goals. The Joint Applicants also represent that the Arrangement provides the University with the supplier, price, terms, conditions, and quality options it elects, while meeting its goal to create a more sustainable campus and community and become a leader in sustainability education. The Joint Application explains that the Agreement fosters innovation and market access for cost-effective supply- and demand-side retail electric service through the use of an existing natural gas compression site in AES Ohio's service territory to distribute generation. Furthermore, the Joint Applicants agree that the Arrangement ensures AES Ohio's distribution and transmission systems are available for distributed generation through the development of a new, innovative renewable energy resource that will provide clean and carbon free energy to AES Ohio's transmission and distribution systems.

{¶ 11} The Joint Applicants also point out that the Arrangement supports the emergence of the competitive electricity market through the development of a new, innovative, carbon-free renewable energy resource, while ensuring effective competition in the provision of retail electric service by foregoing cost recovery of any kind from other AES Ohio customers and by avoiding anticompetitive subsidies or charges. The Joint Applicants note that the Arrangement provides coherent, transparent means of giving appropriate incentives to the development of innovative, environmentally friendly waste heat system technologies that can adapt successfully to and provide cost-effective solutions for potential environmental mandates. Further, the Joint Applicants assert that the Arrangement protects at-risk populations and all other AES Ohio customers by developing a new renewable energy resource that does not require cost recovery of any kind from at-risk populations or

from any other AES Ohio customers. Lastly, the Joint Applicants represent that the Arrangement facilitates the State of Ohio's effectiveness in the global economy by encouraging the development and growth of alternative energy sources and by allowing a top-tier educational institution in Ohio to further expand and improve its sustainability initiatives and commitment to renewable energy development.

B. *Summary of the Staff Report*

{¶ 12} Based on its review of the structure of the reasonable arrangement provided in the Joint Application and as further clarified in responses to data requests, Staff concludes that the proposed Joint Application adheres to the requirements for a reasonable arrangement under R.C. 4905.31 and Ohio Adm.Code 4901:1-38.

{¶ 13} Under the standard interconnection process specified in Ohio Adm.Code 4901:1-22-08(C)(1)(c), the applicant pays for the upgrades needed to provide interconnection services, these costs are booked as contribution in aid of construction—instead of plant in service—and are not included in the distribution rates paid for by other customers. However, Staff notes that in the Joint Application, AES Ohio proposes to waive the cost of interconnection for this project and include the associated circuit upgrades in distribution rates. Staff also states that R.C. 4905.31 and Ohio Adm.Code 4901:1-38 allow for the recovery of “revenue foregone as a result of any such program” and “recovery of certain costs associated with [approved reasonable arrangements] delta revenue.” As such, Staff believes the inclusion of the circuit upgrades in distribution rates reflects an indirect cost associated with the Joint Application paid for by other customers, though notes that the project would also result in new distribution revenues that would not otherwise exist. Therefore, Staff believes the project can be approved using the reasonable arrangement requirements set forth in R.C. 4905.31 and Ohio Adm.Code 4901:1-38. Staff also believes the project will provide benefits in support of state policy, most notably through R.C. 4928.02(G) and (K).

{¶ 14} Furthermore, Staff recommends approval of the Joint Application, subject to the following condition: AES Ohio will credit all new distribution revenues collected from

Tallgrass for the monthly demand charges under OATT Attachment H-15 to the Economic Development Rider (D39) on a quarterly basis for the life of the contract. The credits should be summarized each year as part of the annual report associated with the reasonable arrangement. Further, while the Joint Application contemplates upgrades to distribution circuits to be included in a future rate case or rider proceeding, approval of this reasonable arrangement shall not be deemed to be preapproval of any future base rates or rider charges related to these upgrades. Accordingly, AES Ohio will still bear the burden of proving, in any such future case, that such assets are used and useful and are otherwise eligible for recovery under applicable laws and regulations.

III. COMMISSION CONCLUSION

{¶ 15} R.C. 4905.31 provides that a public utility may enter into a reasonable arrangement with one of its customers and that a public utility may request recovery of costs incurred in conjunction with any economic development and job retention program of the utility. Ohio Adm. Code 4901:1-38-05 authorizes an electric utility, with one or more of its mercantile customers, to file an application for approval to enter into a reasonable arrangement and prescribes certain verifiable information to be included within the application. Moreover, pursuant to Ohio Adm. Code 4901:1-38-05(A),(B), the electric utility/mercantile customer filing the application bears the burden of proof to show that the proposed arrangement is reasonable, does not directly or indirectly provide rebates, special rates, and free service in violation of R.C. 4905.33, and does not provide an unreasonable advantage or prejudice towards any party under R.C. 4905.35.

{¶ 16} Upon our review of the requirements for an electric distribution utility to enter into a reasonable arrangement with one of its mercantile customers pursuant to Ohio Adm. Code 4901:1-38-05, the Commission finds that the requirements are clearly met here, subject to Staff's condition. The Joint Applicants have demonstrated that not only will the University leverage this Arrangement to promote education, research, and student involvement as a leading institution in sustainability, but it also promotes state policy set forth in R.C. 4928.02. We find that the Arrangement presents an opportunity for the

University to create a more sustainable campus and community, while ensuring that no other AES Ohio customers will bear any of the direct associated costs. Moreover, we recognize the University's stance that the Arrangement offers students hands-on learning opportunities, as well as potential employment opportunities in the energy sector.

{¶ 17} The Commission also finds significant that the Arrangement will foster innovation via the development of a new renewable energy resource while ensuring effective competition in the provision of retail electric service by foregoing cost recovery of any kind from other AES Ohio customers and by avoiding anticompetitive subsidies or charges. Relatedly, we find that the Joint Applicants have accounted for the lack of an applicable distribution rate for the proposed transaction, such that Tallgrass will compensate AES Ohio for delivering the power by paying a rate consistent with AES Ohio's Wholesale Distribution charge as calculated in its Open Access Transmission Tariff of PJM Interconnection, LLC. Further, we approve that AES Ohio will provide transmission benefits to the University via its Transmission Cost Recovery Rider Opt-Out Program, as authorized by Case No. 18-1875-EL-GRD, et al. *See In re The Dayton Power and Light Co.*, Case Nos. 18-1875-EL-GRD, et. al, Opinion and Order, (June 16, 2021). We also recognize that that the Tallgrass Waste Heat Facility may potentially cause reliability issues for AES Ohio's standard KB1202 circuit as currently constructed. However, the Commission finds it reasonable that AES Ohio will prioritize upgrading that circuit and plan to recover the cost of this upgrade via a distribution case or applicable rider proceeding, consistent with its usual cost recovery mechanisms without additional assessment to Tallgrass or the University.

{¶ 18} Accordingly, we find that the Joint Application satisfies the requirements set forth in R.C. 4905.31 and Ohio Adm.Code 4901:1-38-05 for the approval of a unique arrangement subject to Staff's recommendation and should, therefore, be approved. The Joint Applicants are directed to file a final contract implementing the arrangement in this docket as soon as possible. Further, AES Ohio is directed to credit all new distribution revenues collected from Tallgrass for the monthly demand charges under OATT

Attachment H-15 to the Economic Development Rider (D39) on a quarterly basis for the life of the contract, such that the credits shall be summarized each year as part of the annual report associated with the reasonable arrangement.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 19} AES Ohio is an electric light company, as defined by R.C. 4905.03(A)(3), and a public utility, as defined under R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 20} The University of Dayton is currently AES Ohio's customer and qualifies as a mercantile customer, as defined by R.C. 4928.01(A)(19).

{¶ 21} Tallgrass Dayton Community Power, LLC is currently AES Ohio's customer and qualifies as a mercantile customer, as defined by R.C. 4928.01(A)(19).

{¶ 22} R.C. 4905.31 provides that an electric distribution utility may enter into a reasonable arrangement with one of its mercantile customers and that the utility may request recovery of costs incurred in conjunction with any economic development and job retention program of the utility. Ohio Adm.Code 4901:1-38-05 authorizes an electric utility, with one or more of its mercantile customers, to file an application for approval to enter into a reasonable arrangement.

{¶ 23} On August 10, 2023, the University, Tallgrass, and AES Ohio filed their Joint Application requesting that the Commission approve a reasonable arrangement, pursuant to R.C. 4905.31 and Ohio Adm.Code 4901:1-38-05.

{¶ 24} Pursuant to Ohio Adm.Code 4901:1-38-05, interested persons had the opportunity to file comments or objections regarding the Joint Application. No comments or objections were filed.

{¶ 25} The University, Tallgrass, and AES Ohio's Joint Application to enter into a reasonable arrangement, pursuant to R.C. 4905.31 and Ohio Adm.Code 4901:1-38-05, is

reasonable, does not violate R.C. 4905.35 or 4905.33, and, thus, should be approved, consistent with this Finding and Order.

V. ORDER

{¶ 26} It is, therefore,

{¶ 27} ORDERED, That the joint motion to establish a procedural schedule is moot and, by default denied. It is, further,

{¶ 28} ORDERED, That the motion to appear pro hac vice of Ms. Shannon Coleman be granted. It is, further,

{¶ 29} ORDERED, That the Joint Application for reasonable arrangement amongst the University, Tallgrass, and AES Ohio be approved, as set forth in this Finding and Order. It is, further,

{¶ 30} ORDERED, That the University, Tallgrass, and AES Ohio take all necessary steps to carry out the terms of this Finding and Order. It is, further,

{¶ 31} ORDERED, That nothing in this Finding and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 32} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
Daniel R. Conway
Lawrence K. Friedeman
Dennis P. Deters
John D. Williams

IMM/dmh

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Case No(s). 23-0804-EL-AEC

Summary: Finding & Order finding that the joint application for a reasonable arrangement amongst the University of Dayton, Tallgrass Dayton Community Power, LLC, and Dayton Power and Light Company d/b/a AES Ohio is reasonable and should be approved. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio.