

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE PROCUREMENT
OF STANDARD SERVICE OFFER
GENERATION FOR CUSTOMERS OF THE
DAYTON POWER AND LIGHT COMPANY.

CASE NO. 17-957-EL-UNC

FINDING AND ORDER

Entered in the Journal on September 21, 2022

I. SUMMARY

{¶ 1} In this Finding and Order, the Commission directs The Dayton Power and Light Company d/b/a AES Ohio to modify its standard service offer procurement auction schedules in the manner set forth in its filing.

II. PROCEDURAL BACKGROUND

{¶ 2} The Dayton Power and Light Company d/b/a AES Ohio (AES Ohio) qualifies as an electric utility as defined by R.C. 4928.01(A)(11) and as an electric distribution utility (EDU) as defined by R.C. 4928.01(A)(6).

{¶ 3} R.C. 4928.141 provides that electric utilities shall provide consumers a standard service offer (SSO) of all competitive retail electric services in accordance with R.C. 4928.142 or 4928.143. The SSO functions to make generation supply available to customers that are not receiving this supply from a competitive retail electric services provider and is sometimes referred to as default supply.

{¶ 4} On October 20, 2017, the Commission modified and approved an amended stipulation establishing AES Ohio's third ESP (ESP III). *In re Dayton Power & Light Co.*, Case No. 16-395-EL-SSO (*ESP III Case*), Opinion and Order (Oct. 20, 2017). ESP III included a competitive auction-based format for supply of AES Ohio's SSO load for the period between November 1, 2017, and October 31, 2023, a format that the Commission had previously accepted in AES Ohio's original ESP (ESP I).

{¶ 5} Following protracted litigation, which included several rounds of rehearing and a second evidentiary hearing compelled by an intervenor’s withdrawal from the amended stipulation establishing ESP III, the Commission issued a Supplemental Opinion and Order further modifying and approving ESP to eliminate AES Ohio’s distribution modernization rider. *ESP III Case*, Supplemental Opinion and Order (Nov. 21, 2019). Consequently, on November 26, 2019, AES Ohio filed a notice of withdrawal of its application for ESP III pursuant to R.C. 4928.143(C)(2)(a) and signaled its intent to implement its most recent SSO—ESP I—pursuant to R.C. 4928.143(C)(2)(b) by filing proposed revised tariffs in Case No. 08-1094-EL-SSO. *ESP III Case*, Notice of Withdrawal (Nov. 26, 2019); *In re The Dayton Power and Light Co.*, Case No. 08-1094-EL-SSO, et al. (*ESP I Case*), Proposed Revised Tariffs (Nov. 26, 2019).

{¶ 6} On December 18, 2019, in addition to approving AES Ohio’s withdrawal of its ESP application and terminating ESP III,¹ the Commission issued a Second Finding and Order approving, with modifications, AES Ohio’s proposed revised tariffs in the *ESP I Case*. *ESP I Case*, Second Finding and Order (Dec. 18, 2019). Therein, the Commission noted that, in order to maintain the integrity of competitive wholesale and retail markets in the state, ESP I included and continued to embrace the competitive bid process (CBP) for procuring SSO generation. *ESP I Case*, Second Finding and Order (Dec. 18, 2019) at ¶ 28. The Commission further directed AES Ohio “to continue to request appropriate CBP auction schedules as necessary to continue to serve SSO customers until DP&L’s next SSO is approved.” *Id.*

{¶ 7} Since that time, AES Ohio’s auction schedule has been modified due to delays in the timing of PJM Interconnection, LLC’s (PJM) base residual auction (BRA). *In re the Procurement of Std. Serv. Offer Generation Customers of The Dayton Power and Light Co.*, Case No. 17-957-EL-UNC, Finding and Orders (Feb. 10, 2021) and (June 16, 2021).

¹ *ESP III Case*, Finding and Order (Dec. 18, 2019).

{¶ 8} On December 22, 2021, the Federal Energy Regulatory Commission (FERC) issued an order reversing FERC's previous determination that the backward-looking energy and ancillary services offset (E&AS Offset) was just and reasonable. Given this reversal, FERC directed PJM to submit a compliance filing within 60 days to revise its Tariff and Operating Agreement and, in order to incorporate the revised E&AS Offset in the BRA for the 2023/2024 delivery year, directed PJM to submit a compliance filing within 30 days that proposes a new schedule for the BRA and subsequent BRAs. *Order on Voluntary Remand*, Case Nos. EL19-58-006; ER19-1486-003, at ¶ 2 (Dec. 22, 2021).

{¶ 9} On January 21, 2022, PJM submitted a compliance filing in response to the above order in which PJM proposed changing the BRA for the 2023/2024 delivery year from January 25, 2022, to June 8, 2022. *Compliance Filing Concerning Certain Proposed Revised Pre-Auction Deadlines*, Case Nos. EL19-58-010; ER19-1486-00, at 2 (Jan. 21, 2022).

{¶ 10} On February 7, 2022, AES Ohio filed an application to adjust its SSO procurement auctions. Due to FERC's decision to delay the BRA, AES Ohio proposed to procure 100 tranches of a 12-month product for the 2022/2023 delivery year at its March 2022 SSO auction and not to procure 50 tranches of the 24-month product. Further, to account for this loss, AES Ohio proposed to increase its tranches for its March 2023 SSO auction such that it would procure 50 tranches of a 12-month product for the 2023/2024 delivery year and 50 tranches of a 24-month product for the 2023/2025 delivery period.

{¶ 11} On February 23, 2022, the Commission approved AES Ohio's application to adjust its SSO procurement auctions in the manner described in its application.

{¶ 12} On August 12, 2022, AES Ohio filed an application to modify its CBP.

{¶ 13} On September 12, 2022, OCC filed objections to AES Ohio's application.

{¶ 14} On September 19, 2022, AES Ohio filed reply comments to OCC's objections.

III. DISCUSSION

A. *Summary of AES Ohio's Filing*

{¶ 15} In its filing, AES Ohio notes that, as currently configured, it conducts a single annual SSO procurement auction in the Spring of each year. AES Ohio asserted that it formerly procured varied-length products at those auctions, which resulted in blended SSO rates that were not dependent on a single auction result; however, the recent delays in timing of the BRA held by PJM due to certain FERC rulings has led customers to experience the brunt of this lack of blended rates. Therefore, AES Ohio believes it is now appropriate to again hold multiple auctions per year and offer varied-length products as proposed in this application. Consequently, AES Ohio proposes that the Commission authorize it to hold auctions in November 2022 and March 2023 to procure SSO supply for the 2023/2024 delivery year, to procure a 12-month supply of 35 tranches at the November auction, and both a 12-month supply of 25 tranches and a 24-month supply of 40 tranches at the March 2023 auction.

B. *Comments*

{¶ 16} In its filing, OCC objections primarily center on the Percentage of Income Payment Plan (PIPP) program, which is administered by the Ohio Department of Development (ODOD) and the Commission for low-income electric consumers under state law. According to OCC, as currently run, the PIPP program is violating R.C. 4928.02(L) and R.C. 4928.542 to protect at-risk PIPP customers of AES Ohio by charging them prices for electricity in excess of AES Ohio's SSO for the past two years. OCC argues that this case provides an opportunity for the Commission to avoid this plight in the future for AES Ohio's PIPP customers by including PIPP customers in the SSO auction. OCC asserts that combining the PIPP and SSO auctions is permissible under Ohio Adm.Code 122:5-3-06, which allows the ODOD Director to aggregate PIPP consumers for competitive auctions if substantial savings for the PIPP plus program can be realized.

{¶ 17} In its reply comments, AES Ohio argues that OCC did not address AES Ohio's proposed auction format adjustment but, instead, the PIPP program, which employs a separate procurement process from the SSO auctions. AES Ohio asserts that the current PIPP program procurement process was established in *In the Matter of the Implementation of Sections 4928.54 and 4928.544 of the Revised Code*, Case No. 16-247-EL-UNC (*Implementation Case*), Finding and Order (Mar. 2, 2016). AES Ohio notes that OCC does not contend that AES Ohio failed to follow the process approved in the *Implementation Case* and that the Commission has approved AES Ohio's PIPP rates reflecting auction results in Case No. 17-1163-EL-UNC, to which OCC did not object. According to AES Ohio, OCC's recommendation to require AES Ohio to procure its PIPP load through its SSO auction to avoid situations where the PIPP rates are higher than SSO rates does not comply with R.C. 4928.54, which requires the aggregation of PIPP load. AES Ohio also argues that OCC failed to address the effect of including PIPP load on the SSO price, implications of the statutory requirement that only competitive retail electric service (CRES) providers may participate in the PIPP procurement process, or how combining the two auctions would comply with R.C. 4928.542(B). AES Ohio states that it is open to discussing alternative PIPP procurement processes that would protect customers under the current statutory framework but believes such a discussion should occur in a separate matter open to all interested stakeholders.

C. Commission Decision

{¶ 18} First, we find OCC's objections to the application unavailing. As noted above, AES Ohio uses a Commission-approved competitive-auction based format to supply SSO load to certain customers, pursuant to R.C. 4928.141 and 4928.143. Despite OCC's reference to Ohio Adm.Code 122:5-3-06, R.C. 4928.54 specifically requires that "[t]he director of development services shall aggregate percentage of income payment plan program customers for the purpose of establishing competitive procurement process for the supply of competitive retail electric service for those customers. The process shall be an auction. * * *." [Emphasis added]. Furthermore, pursuant to R.C. 4928.544, ODOD submitted its request to the Commission to design, manage, and supervise the auction process, which was

the impetus for the current design of the PIPP auction format decided in the *Implementation Case*. In response to OCC's request to combine PIPP and SSO auctions, it is clear from the plain language of the statute that the General Assembly intended that PIPP program loads be aggregated and procured from a competitive bidding process separate from the SSO customers. For example, when responding to a stakeholder request to use a descending-clock PIPP auction format instead of a request for proposal (RFP) auction format, we noted in the *Implementation Case* that the plain language of "R.C. 4928.54 provides that only [competitive retail electric service] providers may participate in the auction. However, more than just CRES providers participate in the SSO auctions." *Implementation Case, Finding and Order* (March 2, 2016) at 4-5. Therefore, OCC's proposed solution is untenable. In regard to OCC's claim that electricity prices resulting from the PIPP auctions have been higher than those procured under the SSO auction and that this outcome violates R.C. 4928.02(L) and 4928.542, we note that we addressed the possibility of this situation in the decision to use the current format stating that, "[w]hile this may occasionally result in the PIPP load being served at a price higher than the blended SSO price, the RFP auction has been established to reduce the cost of the PIPP program to the otherwise applicable SSO over the long-term, in compliance with R.C. 4928.542(B)." *Implementation Case* at 5. Consequently, we affirm our previous determination that the existing PIPP program auction format is required under law.

{¶ 19} Upon review of the application, we find AES Ohio's proposal to modify its CBP reasonable; therefore, we direct AES Ohio to adjust its SSO auction schedule in accordance with the application.

IV. ORDER

{¶ 20} It is, therefore,

{¶ 21} ORDERED, That AES Ohio's SSO procurement auction schedule be modified in a manner consistent with this order. It is further,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

MJS/dmh

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Summary: Finding & Order that the Commission directs The Dayton Power and Light Company d/b/a AES Ohio to modify its standard service offer procurement auction schedules in the manner set forth in its filing electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio