***OCC EXHIBIT NO. \_\_\_\_\_\_***

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of the Application of Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid. | )  )  )  ) | Case No. 18-1875-EL-GRD |

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| In the Matter of the Application of the Dayton Power and Light Company for Approval of A Limited Waiver of Ohio Adm. Code 4901:1-18-06(A)(2). | )  )  )  ) | Case No. 18-1876-EL-WVR |

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| In the Matter of the Application of the Dayton Power and Light Company for Approval of Certain Accounting Methods. | )  )  ) | Case No. 18-1877-EL-AAM |

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| In the Matter of the Application of the Dayton Power and Light Company for Administration of the Significantly Excessive Earnings Test under R.C. 4928.143(F) and Ohio Adm. Code 4901:1-35-10 for 2018. | )  )  )  )  )  ) | Case No. 19-1121-EL-UNC |

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| In the Matter of the Application of the Dayton Power and Light Company for A Finding That Its Current Electric Security Plan Passes the Significantly Excessive Earnings Test and More Favorable in the Aggregate Test in R.C. 4928.143(E). | )  )  )  )  )  ) | Case No. 20-680-EL-UNC |

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| In the Matter of the Application of the Dayton Power and Light Company for Administration of the Significantly Excessive Earnings Test under R.C. 4928.143(F) and Ohio Adm. Code 4901:1-35-10 for 2019. | )  )  )  )  )  ) | Case No. 20-1041-EL-UNC |

**TESTIMONY**

**OPPOSING THE SETTLEMENT AND MAKING CONSUMER RECOMMENDATIONS**

**OF**

**EDWARD W. HILL, Ph.D.**

**On Behalf of**

**The Office of the Ohio Consumer’s Counsel**

*65 East State Street, 7th Floor*

*Columbus, Ohio 43215*

**DECEMBER 17, 2020**

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# INTRODUCTION

***Q1. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.***

***A1.*** My name is Edward W. Hill; I am also referred to as Ned Hill. I am Professor of Economic Development at the John Glenn College of Public Affairs and the section on City and Regional Planning at The Ohio State University. I am also Senior Research Associate of OSU’s Ohio Manufacturing Institute. My business address is Page Hall, 1810 College Road, Columbus, Ohio 43214.

***Q2. ON WHOSE BEHALF AND IN WHAT CAPACITY ARE YOU TESTIFYING?***

***A2.*** I am testifying on behalf of the Office of the Ohio Consumer’s Counsel (“OCC”). My testimony is my own and does not represent the positions or views of The Ohio State University, The Ohio Manufacturing Institute, The John Glenn College of Public Affairs, or the College of Engineering. I am testifying on behalf of OCC, without remuneration.

***Q3. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND, PROFESSIONAL QUALIFICATIONS, AND EMPLOYMENT EXPERIENCE.***

***A3.*** I graduated from the University of Pennsylvania with a bachelor’s degree in economics and urban studies in 1973. After spending a year in a doctoral program at the University of Chicago, I attended the Massachusetts Institute of Technology where I earned a master's degree in City and Regional Planning and a Ph.D. in Urban and Regional Planning and Economics in 1981. The doctoral program was a collaboration between the two departments. My doctoral field examinations in economics were in industrial organization and regulation, labor economics, and urban and regional economics. In the Department of Urban Studies and Planning my examinations were in regional economic development.

I was a member of the Cleveland State University faculty from 1985 until the end of June 2015. During my 30 years at Cleveland State, I rose through the academic ranks: Assistant Professor, Associate Professor, Professor and Distinguished Scholar of Economic Development, and then Dean. All of these positions were in the Maxine Goodman Levin College of Urban Affairs. I was Cleveland State University’s Vice President of Economic Development and a member of the cabinet of Presidents Schwartz and Bergman.

The Ohio State University invited me to join its interdisciplinary Discovery Theme in Materials and Manufacturing for a Sustainable World beginning in the 2015-16 academic year.

I use public choice economic concepts extensively in my public policy work, my work in economic development, and in my teaching. This spring I will teach a graduate seminar in the Glenn College of Public Affairs titled *Public Affairs and Public Choice*. I also introduce students to public choice concepts and theory in my undergraduate fall course, Introduction to Public Affairs.

Ohio Governors Taft, Strickland, Kasich, and DeWine, as well as former Ohio Speaker of the House of Representative Batchelder, have appointed me to various state commissions and boards dealing with economic and workforce development and public finance. The Cuyahoga County Mayors and Managers Association recognized my service to the communities of Northeast Ohio in 2016 with its George V. Voinovich Municipal Service Award. And the Ohio Manufacturers Association’s Board of Directors presented me with its Legacy Award in 2005, and again in 2016, for my work on behalf of Ohio’s manufacturers. The 2005 award was for my work associated with business tax reform, and the 2016 award was for my work to protect electricity deregulation.

My academic research focuses on the areas of urban and regional economic development policy, the operation of regional labor markets, regional economic resilience, and industry studies with an emphasis on manufacturing. This research emphasizes issues that are important to the state of Ohio’s economy; that is what interested me in energy economics in 2010.

I participated in much of the energy research conducted at Cleveland State University’s Levin College. I led the research and writing of the *Ohio Utica Shale Gas Monitor* and was one of the authors of *An Analysis of the Economic Potential for Shale Gas Formations in Ohio* (February 2012). I was also one of the co-investigators and co-authors of two studies on the economic impact of the deregulation of Ohio’s electricity generating markets.[[1]](#footnote-2)

I have testified before the Public Utilities Commission of Ohio (“PUCO”) and the Ohio General Assembly on public policies related to electricity regulation since December 2014. I testified on behalf of the Ohio Manufacturers’ Association Energy Group (OMAEG) against a Power Purchase Agreement proposed by FirstEnergy to support its failing nuclear power plants as well as against its proposed Electric Security Plan. I also testified for the OMAEG against American Electric Power Company’s Electric Security Plan and its desire to bailout its ownership interest in the failing Ohio Valley Electric Corporation’s coal-fired power plant campuses in Ohio and Indiana. I testified on my own behalf against House Bill 6 in committee hearings in both the Ohio House of Representatives and the Ohio Senate. In all of these engagements I was not paid.

# PURPOSE AND ARGUMENT

***Q4. WHAT IS THE PURPOSE OF YOUR TESTIMONY?***

***A4.*** I am testifying in opposition to the October 23, 2020 Stipulation and Recommendation filed in this case (the “Settlement” or “DP&L’s Settlement”) and making consumer recommendations. Through my testimony, I demonstrate that the Settlement fails the PUCO’s three-prong test for PUCO approval of settlements. In fact, it violates all three prongs: it is not the product of serious bargaining, it does not benefit customers or the public interest, and it violates regulatory principles and practices.

The focus of my testimony is on what I refer to as the *redistributive coalition*. What I mean by this is that in PUCO proceedings such as this one, the utility works to gain the signatures of a group of parties—the coalition—that on its face makes it seem like the settlement has widespread support from diverse parties. The utility then touts this support, claiming that it shows that the settlement benefits customers and is good for the public and state of Ohio at large. But as I explain below, the signatories do not “represent a wide range of interests.” Instead, DP&L has paid for the support of various signatory parties that represent their own special interests. An unfortunate effect of this process is that, under the PUCO’s settlement standard, parties are pressed to join the redistributive coalition to avoid missing out on cash or other benefits if they don’t join.

Specifically, the signatories are a coalition of self-interested parties – a coalition of convenience. Through the settlement of DP&L’s cases they influence public policy in deleterious ways, redistribute income in ways that harm electricity consumers, privatize (in effect) part of the state’s economic development and health care policy making, and unfairly have government pick winners and losers among competing private businesses.

This type of utility negotiation – enabling the procurement of settlement signatures for cash, payments for electricity used, and investments that benefit a small number of stakeholders – is inappropriate in a regulatory process.

***Q5. IS THE TERM “REDISTRIBUTIVE COALITION” WELL RECOGNIZED IN THE ACADEMIC FIELDS OF PUBLIC POLICY AND ECONOMICS?***

***A5.*** Yes. The concept is one of the tools provided to public policy analysis by public choice theory. It is well established, elements of the concept appeared as early as 1965 with economist Mancur Olson’s book *The Logic of Collective Action*.[[2]](#footnote-3) The concept was also developed by another economist, George Stigler in 1970,[[3]](#footnote-4) with further refinements by Olson in his 1982 book *The Rise and Decline of Nations.*[[4]](#footnote-5)

***Q6. WHAT IS A “REDISTRIBUTIVE COALITION”?***

***A6.*** A redistributive coalition is a relatively small group that uses political or regulatory processes to secure benefits that cannot be earned in the competitive market. In other words, the coalition uses its political power and knowledge of regulatory processes to generate either revenue streams, market power that can increase revenue, or outcomes that are part of a member’s advocacy agenda.

A redistributive coalition depends on the power of the state to deliver the monetary rewards desired by its members (these rewards are called *rents* because the revenues or benefits are not earned through market processes) or non-monetary benefits. These benefits are paid for by passing the costs of the desired rewards onto the much larger group of utility customers (or taxpayers in other contexts) that are not part of the coalition. How the revenue is generated to pay for these rewards is immaterial as long as benefits are derived through political or regulatory action and the cost of paying for the rewards are shifted onto the large, unorganized portion of society who are not members of the coalition.

Each member of the coalition joins based on their own self-interest, which can result in a coalition having multiple objectives due to the horse-trading that takes place when the coalition is formed. What is key is that they support each other in pursuit of the desired *package* of rewards for coalition members—rewards that are ultimately paid by non-coalition members, including residential consumers.

***Q7. WHY ARE REDISTRIBUTIVE COALITIONS SUCCESSFUL IN SECURING BENEFITS FOR THEIR MEMBERS AT THE EXPENSE OF OTHERS?***

***A7.*** The members of a redistributive coalitions are small in number relative to the rest of the population. They most often share a homogeneous set of objectives. This keeps organizing costs low relative to the anticipated flow of the benefits. The redistributive coalition is also small.

The coalitions that form in response to negotiations at the PUCO are not seeking a single, overarching public policy objective that is mutually shared. Instead, the coalition unites around the dominant objective, or objectives, of the coalition’s organizer and then each of the other members add rewards that they value and are achievable (and are loosely tied to the settlement) in exchange for their public support for the settlement package. What the organizing company is seeking from the coalition is the veneer of widespread public support for the dominant objective of the organizer—the investor-owned utility. Then, in a legally binding *quid pro quo*, which is the settlement, the coalition supports the entire package. Limiting the size of the coalition is especially important when there are different goals involved because each additional goal complicates the bargaining and the expense. Importantly, the group that *is not* part of the redistributive coalition is large and heterogenous making it difficult and expensive to organize.

Redistributive coalitions work because they spread the cost of their non-market-derived benefits over a large population, in this case captive residential customers and unorganized businesses. That is, while the *benefits* to the coalition members are large (such as for DP&L) and concentrated, the *costs* are paid for by the entire population (for example, hundreds of thousands or millions of utility customers). Thus, the per-customer cost might appear insubstantial, making the paying of the extract benefits (such as various DP&L charges) politically palatable.

Redistributive coalitions can also be intentionally opaque. By making their proposals as opaque and technical as possible, it becomes harder for others to join the coalition. This increases the cost of obtaining and of understanding the information and keeps the policy arena an insider’s game. It also makes it less obvious that there is a redistribution at all, as the general public may be unable to understand the nature or magnitude of the benefits that are being shunted to the coalition members.

***Q8. WHAT HARM IS CAUSED BY REDISTRIBUTIVE COALITIONS?***

***A8.***  *The Economist* summarized the harm of redistributive coalitions in its 1998 obituary of Olson: each member of a coalition “gains, then fiercely defends, some benefit for its members, usually with government help. *Subsidies, trade protections and other economic distortions accumulate*, and resources increasingly flow to a specialized class of lawyers, bureaucrats and lobbyists *who know how to work the system*. Redistributive struggles displace productive ones. The result, if medicine is not taken, is a pattern of economic decline.”[[5]](#footnote-6) What holds for nations also applies to a state, such as Ohio, with lagging economic performance.

***Q9. PLEASE EXPLAIN HOW THE SIGNATORY PARTIES TO THE SETTLEMENT FIT THE DEFINITION OF A REDISTRIBUTIVE COALITION.***

***A9.*** The signatories form a classic redistributive coalition. They intervene in PUCO proceedings so that money paid to the utility, in this case DP&L, by other customers (including residential customers’) can be *redistributed* to them in the form of cash or other benefits in exchange for their signatures on a settlement. The signatories are essentially limited to those who regularly interact with the PUCO. They opportunistically form *redistributive coalitions* with slightly varying membership as each regulatory opportunity (*i.e.,* a significant PUCO proceeding) presents itself. The signatory parties do not represent any interests other than their own when they bargain with the utility. The practice of the utility paying for endorsements of signatory parties has evolved over time and, as a result of that evolution, utilities have become more efficient at forming redistributive coalitions.

***Q10. HOW DOES ONE BECOME A MEMBER OF A REDISTRIBUTIVE COALITION?***

***A10.*** The necessary condition for becoming a member of the redistributive coalition is given in the Settlement: “All parties were invited to discuss and negotiate the Stipulation, and it was openly negotiated among those parties that choose to participate; no party was excluded from the negotiations.”[[6]](#footnote-7) This is correct as far as it goes; however, the preceding sentence states: “This Stipulation is a product of lengthy, serious arm’s-length bargaining among the Signatory Parties (all of whom are capable, knowledgeable, and represented by counsel) with the participation of the Staff of the Commission (“Staff”).” In other words, the redistributive coalition is open to all parties that have knowledge about the opportunity to intervene and have access to lawyers who regularly practice before the PUCO. Those who don’t have the sophistication, funding, or awareness of the PUCO’s process are left out.

***Q11. ONCE THE REDISTRIBUTIVE COALITION IS FORMED, HOW DO ITS MEMBERS (INCLUDING THE UTILITY) TAKE ADVANTAGE OF IT TO THE DETRIMENT OF RESIDENTIAL AND OTHER CONSUMERS?***

***A11.*** The list of signatories is carefully constructed following a formula, or recipe, that was used in the ESP settlements for FirstEnergy, AEP Ohio, and DP&L to “demonstrate” the representation of a wide public support for their goals. The reason why this list is limited to these three cases is that I participated as an expert witness in the FirstEnergy and AEP Ohio cases and read the Opinion and Order in DP&L’s ESP case in preparing this testimony.[[7]](#footnote-8) I also prepared a database on benefits won and costs incurred by these redistributive coalitions as part of an academic research project.

The critical sentence in the DP&L Settlement is at the end of the first paragraph on its second page: “This Stipulation accommodates the diverse interests *represented* by the Signatory Parties and is entitled to careful consideration by the Commission.”[[8]](#footnote-9)

DP&L witness Schroder likewise touts the alleged diversity of the signatory parties: “The Stipulation is supported by *parties representing* a wide range of interests, including the interests of Dayton, the largest municipality in DP&L’s service territory (which represents itself and its residents), a representative of residential low-income customers, three state-wide organizations of large industrial customers, one large industrial customer, one of the largest supermarket chains in the country, a state-wide organization representing hospitals in DP&L’s service territory, a large, local, university, four environmental groups, a provider of competitive retail electric service, and four other parties that do business and represent interests in the smart grid field.”[[9]](#footnote-10)

Each of the business, commercial, and governmental signatories represent no interests other than their own. They do not represent a broader group and do not show, let alone prove, that the Settlement is good public policy for Ohio and its utility consumers. The business, commercial, and governmental signatories do not attempt to secure benefits through the PUCO process for other similarly situated entities. They only secure limited benefits for themselves and their members.

The signatures mean just one thing: that those particular signatories were able to extract benefits in exchange for their signatures, benefits that flow to their own bottom lines, members, or constituents. These are benefits that are either directly or indirectly paid for by DP&L’s residential and commercial customers, with the exception of those that are members of the coalition.

***Q12. WHAT ARE SOME EXAMPLES OF THE REDISTRIBUTIONS PROVIDED TO SIGNATORY PARTIES UNDER THE SETTLEMENT?***

***A 12.*** Benefits for a particular supermarket do not flow to its competitors.[[10]](#footnote-11) The Settlement gives the supermarket a benefit that is paid for by all customers of DP&L, even if the Settlement does expressly say that a benefit is paid by all customers.[[11]](#footnote-12) And, through this settlement, the state of Ohio is showing preference for one grocery store over another.

The Settlement assigns benefits to three larger business trade organizations.[[12]](#footnote-13) The benefits are restricted to their members. Having the state of Ohio’s regulatory body (the PUCO) create discriminating revenue-generating opportunities is bad public policy.

# EVIDENCE OF THE EXISTENCE OF REDISTRIBUTIVE COALITIONS

***Q13. IS THE REDISTRIBUTIVE COALITION LIMITED TO JUST THIS CASE INVOLVING DP&L AND ITS SETTLEMENT?***

***A13.*** Far from it. In just the past few years, I have personally witnessed the consistent creation of these types of coalitions in PUCO proceedings. I provided testimony against FirstEnergy’s request for nuclear power plant subsidies in 2014 as part of its ESP case. That was the case where I first saw these coalitions being built (though I understand that the process of utilities securing similar settlements among a similar group of parties long predates that case). The pattern reoccurred as the PUCO considered the Electric Security Plans of AEP Ohio and DP&L.

***Q14. IS THE REDISTRIBUTIVE COALITION THE SAME IN EACH PUCO PROCEEDING?***

***A14.*** Although not literally identical in each PUCO case, there is a core group of parties that consistently participate in PUCO electric proceedings, especially larger proceedings where more money is available for redistribution. There are similarities in the types of organizations that signed on in support of each ESP, and many of those same parties are represented here as signatories to the Settlement.

In sum, the signatory parties predominantly represent either their own interests and not those of customers in general or, if it is a business trade association, its membership. They are not working for the benefit of similar parties. DP&L’s Settlement term with the supermarket does not provide benefits for all grocery stores. The Settlement term with the business groups does not provide benefits for all businesses in Ohio. The Settlement term with the car manufacturer does not provide for broad automaker benefits. The Settlement term with the city does not provide benefits for all municipalities within DP&L’s service territory. The Settlement term with the marketer does not provide benefits for all energy marketers. The Settlement term with the university does not provide benefits for all local universities. The Settlement term with the low-income weatherization group does not provide benefits for all weatherization providers to low-income families.[[13]](#footnote-14)

Collectively, they are not “*parties representing* a wide range of interests” as asserted by DP&L witness Schroder.

***Q15. HOW MUCH MONEY IS BEING REDISTRIBUTED TO THE SIGNATORY PARTIES IN EXCHANGE FOR THEIR SIGNATURES?***

***A15.*** There are about $7.0 million in direct payouts to members of the redistributive coalition other than DP&L listed in the Settlement. Of that amount, $800,000 will be paid for by customers through rider IIR. Payments for the remaining $6.2 million is attributed as being made by DP&L’s shareholders.

But these are not the only benefits delivered to the signatory parties. The Settlement contains a variety of handouts in the form of electricity payments and discounts, including numerous payments of $0.004 per kWh of electricity used by nonresidential customers. These per kWh payments are opaque and not transparent. With the Settlement not containing calculations about the likely benefit to individual group members, it is not publicly known how much these discounts are worth to each signatory party, or, in many cases, even what company will ultimately benefit.

Fortunately, however, DP&L filed its 10-Q report with the Securities and Exchange Commission for the quarter that ended on September 30, 2020. There, the company stated that it expects to spend $30 million over four years on providing flow-through benefits to coalition members.[[14]](#footnote-15) The spending from cash flow generated by the company’s profits averages $7.5 million a year.

***Q16. GIVEN THAT THE SETTLEMENT SAYS THAT MOST OF THESE PAYMENTS (OR BENEFITS) TO SETTLEMENT SIGNATORIES WILL BE FUNDED WITH DP&L SHAREHOLDER DOLLARS, IS THIS SETTLEMENT REALLY THE TYPE OF REDISTRIBUTIVE COALITION THAT YOU DESCRIBE ABOVE?***

***A16.*** Yes, it absolutely is. DP&L’s money for the Settlement payments does not really come from the stockholders. The money comes from DP&L’s customers. As part of the Settlement, DP&L will be allowed to keep charging customers its so-called “Rate Stabilization Charge” or “RSC.” The Rate Stabilization Charge that DP&L’s customers are paying does not compensate DP&L for any costs that DP&L actually incurs. It is a bailout intended by the PUCO to improve DP&L’s financial structure and credit rating. There are no costs associated with non-avoidable rider RSC and the rider is not associated with any investment in the company’s capital stock. As OCC witness Kahal testified, over the roughly four-year term of the Settlement, customers will pay more than $300 million to DP&L under the Rate Stabilization Charge.[[15]](#footnote-16)

The $300 million generated by rider RSC is termed “shareholders money” by the Company. The Settlement calls for 10-percent of the revenue from rider RSC to be diverted to the signatory parties as an inducement to sign the Settlement. DP&L is left with $270 million in no-strings-attached cash. And those who are not part of the redistributive coalition —residential customers, small business customers, large business customers who aren’t signatories, municipalities other than the one that signed, and others—pay for all of it.

Any claim that DP&L’s shareholders, rather than its customers, are paying for the benefits to the signatory parties is either mistaken or an accounting fiction.

***Q17. HOW DO THE SIGNATORY PARTIES THAT ARE NOT GETTING DIRECT PAYOUTS, LIKE CERTAIN ENVIRONMENTAL GROUPS AND SMART GRID VENDORS, FACTOR INTO YOUR ANALYSIS?***

***A17.*** Some of the signatory parties are not receiving cash payouts or rate discounts, but they still receive direct benefits under the Settlement. For example, the Settlement provides $450,000 per year to subsidize smart thermostats. This directly benefits the businesses of a smart thermostat coalition[[16]](#footnote-17) (which incidentally is a limited coalition, as it consists of just two large companies who have smart thermostat businesses, among other things). I note, however, that the subsidizing of smart thermostats could also benefit other smart thermostat manufacturers who are not signatory parties. The Settlement also includes funding for a “water heater controller Pilot” in 200 homes, which will directly benefit a signatory party whose business involves selling water heater controllers.[[17]](#footnote-18) Both of these programs are paid out of company profits that I associate with Rider RSC.

Two capital programs paid by the company’s Infrastructure Investment Rider (IIR).[[18]](#footnote-19) The Electric vehicle rebate and charging station program is expected to cost $5.1 million and the Customer Information System is listed as having a cost of $8.8 million.[[19]](#footnote-20) Some signatory industry associations and companies benefit from these two investments.

With respect to environmental parties, it seems clear to me that their interests in the Settlement are in the funding that customers will provide for smart grid investments, which could lead to environmental benefits. The environmental parties did not intervene in any of the other cases included in the Settlement. So although they may not get cash payouts under the Settlement, they still contribute to the creation of the redistributive coalition by adding another “check box” for the PUCO to say that the Settlement is green. The environmental parties do not represent the consumers that will ultimately pay the high cost of the Settlement.

***Q18. HOW DOES YOUR DISCUSSION OF THE REDISTRIBUTIVE COALITION TIE INTO THE PUCO’S THREE-PRONG TEST?***

***A18.*** The existence of the redistributive coalition, and the benefits provided to its members under the Settlement, demonstrate that the Settlement fails each of the three prongs of the PUCO’s three-prong test.

***Q19. WHY DO YOU BELIEVE THAT THE SETTLEMENT FAILS THE FIRST PRONG OF THE TEST, THAT THE SETTLEMENT MUST BE THE PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE AND KNOWLEDGEABLE PARTIES?***

***A19.*** First, I note that the first prong of the test—requiring parties to be capable and knowledgeable—is problematic in its own right because it suggests that less sophisticated parties do not have a place in PUCO settlements. This further solidifies the redistributive coalition’s hold over the PUCO process.

Second, under the PUCO’s settlement standard, parties in opposition are pressed to join the redistributive coalition. The staff of the PUCO participates in the bargaining and is in a position to signal when they favor a proposed settlement and the window on bargaining is about to close. The opposition to the settlement can maintain their opposition knowing that the settlement as proposed is likely to be approved or they can join in and extract some direct benefit. The advantage for the coalition is that late comers do not cost them anything. The formerly opposing party is legally bound to support the settlement. And the PUCO commissioners are more likely to support the proposal. The PUCO should ban this practice of a utility paying cash and cash equivalent benefits in exchange for signatures on a settlement.

Third, the existence of the redistributive coalition demonstrates why serious bargaining did not occur. Serious bargaining would involve the utility making material concessions for the benefit of all customers. Instead, DP&L got basically most of what it wanted. The company’s distribution modernization charge was terminated when the Ohio Supreme Court invalidated a similar charge that was assessed by FirstEnergy. DP&L got another four years of unearned revenue in the form of continuing the $79-million-per-year Rate Stabilization Charge, customer funding for smart grid, and avoiding the potential of paying customers for profit-related refunds.[[20]](#footnote-21) In exchange, it “negotiated” $30 million in payouts to signatory parties—money that is redistributed from the $300 million in Rate Stabilization Charge money paid by customers.

Those not part of the redistributive coalition get higher utility bills. And various businesses who are not Settlement signatories will compete with signatory parties whose businesses are subsidized by the Settlement’s government-sanctioned cash payouts. Private businesses that are not part of the settlement not only have to compete against competitors, that are signatories, but they also pay part of the subsidy their competitors receive.

***Q20. WHY DO YOU BELIEVE THAT THE SETTLEMENT FAILS THE SECOND PRONG OF THE TEST, THAT THE SETTLEMENT MUST BENEFIT CUSTOMERS AND THE PUBLIC INTEREST?***

***A20.*** Customers that are not members of the redistributive coalition *do not* benefit from the PUCO settlement process. The signatory parties create redistributive coalitions for the purpose of gaining an advantage for themselves.

As I explained above, the Settlement is unfair for customers that are not part of the redistributive coalition. Those customers will pay hundreds of millions of dollars in subsidies to DP&L for the Rate Stabilization Charge, without experiencing any direct benefits. They will pay more than $100 million over four years for a smart grid (that OCC is concerned about).[[21]](#footnote-22) And they will be denied an opportunity for significant profit-related refunds (to which they may be entitled).[[22]](#footnote-23)

It is certainly true that *some* customers will benefit under the Settlement: the signatory parties. But these customers represent a mere fraction of DP&L’s customer base. Residential customers (and especially residential customers not living in the one city) are left out. Small and most mid-sized businesses are left out. All kinds of other businesses are left out because they are not part of the small group that figured out how to use the PUCO process for their own gain.

The beneficiaries of the Settlement are not diverse. The signatory coalition has the appearance of diversity that in reality lacks the depth of real, meaningful, broad participation in benefits across DP&L’s service area.

For these reasons, the Settlement neither benefits consumers nor the public interest.

***Q21. WHY DO YOU BELIEVE THAT THE SETTLEMENT FAILS THE THIRD PRONG OF THE TEST, THAT THE SETTLEMENT MUST BE CONSISTENT WITH REGULATORY PRINCIPLES AND PRACTICES?***

***A21.*** Redistributive coalitions are a bad regulatory practice for settlements. DP&L’s Settlement features a redistributive coalition, and that is inconsistent with the third prong of the settlement test.

Also, the PUCO should be observing an enforcing a regulatory principle of equity for participants and outcomes in its processes. The Settlement featuring the redistributive coalition is not providing an equitable process or outcome for the general body of consumers.

Redistributive coalitions are a bad practice for public policy making. Public policy demands that the PUCO protect a utility’s customers from the potential for market abuses. In the context of regulated monopolies like DP&L, we generally think of this as protecting customers from price gouging that would otherwise occur due to the lack of competition. It violates basic regulatory principles when captive customers subsidize utilities and their unregulated affiliates.

It is also bad public policy because the subsidies that flow to the utilities compensate them for making bad business decisions. In the cases of FirstEnergy, AEP, and DP&L my comment includes business decisions that went badly wrong outside of the borders of the state of Ohio by their holding companies. It violates basic regulatory principles when captive customers subsidize utilities and their unregulated affiliates.

In terms of economic development, power is at the base of every supply chain in the state, cushioning utilities from competition, subsidizing their loss-making decisions, and allowing gold-plating of transmission and distribution assets means increased operating costs, loss in competitive advantage, and economic deterioration. For residential customers the implication is clear, their electricity costs go up and their opportunity for work goes down. This results in residential customers in particular paying unjust and unreasonable utility rates.

Redistributive coalitions are another example of market abuse. Because membership in the club is exclusive and difficult, if not impossible to obtain for many stakeholders (such as individual residential consumers, small businesses, and others), the PUCO process devolves into a façade, where stakeholders pose as representatives of the public interest at large while actually working *against* that very same public. This anticompetitive behavior harms competitive markets in several ways. First, it increases some, but not all, customers’ utility bills. This results in unjust and unreasonable rates, especially for residential consumers. Second, the members of the redistributive coalition gain a competitive advantage over similar business that have not yet figured out how to game the system or who lack the resources to do so if they wanted. This violates the regulatory principle against subsidizing unregulated business and advances no conceivable public policy goals.

A much better regulatory practice would be for the PUCO to support and approve settlements that truly represent the broad interests of all customers, not narrow self-interest of signatory parties

***Q22. DOES THE PUCO’S SETTLEMENT STANDARD STIMULATE THE FORMATION OF REDISTRIBUTIVE COALITIONS?***

***A22.*** Yes, redistributive coalitions are opportunity-driven. The PUCO’s regulatory process, involving the three-prong test for adopting settlements provides the opportunity for redistributive coalitions.

The redistributive coalitions that have formed around Electric Security Plans and this Settlement have had one dominant member—the investor-owned utility that is the major beneficiary. In a 2008FirstEnergy ESP case, Commissioner Cheryl Roberto wrote in a concurring/dissenting opinion\_ that “[B]ecause of the utility's ability to withdraw, the remaining parties certainly do not possess equal bargaining power in an ESP action before the Commission. The Commission must consider whether an agreed-upon stipulation arising under an ESP represents what the parties truly view to be in their best interest -- or simply the best that they can hope to achieve when one party has the singular authority to reject not only any and all modifications proffered by the other parties but the Commission's independent judgment as to what is just and reasonable." .”[[23]](#footnote-24) Given that essentially all settlements occur only with the utility’s approval, Commissioner Roberto’s concern has even broader applicability to settlements of PUCO cases, to the detriment of less empowered parties like residential consumers.

***Q23***. **DO YOU HAVE RECOMMENDATIONS FOR HOW THE PUCO’S SETTLEMENT PROCESS COULD BE IMPROVED TO OFFER MORE COMPREHENSIVE CONSUMER PROTECTIONS?**

***A23.*** Yes. To begin with, the second and third prongs of the PUCO’s settlement standard should be modified so that the settlement is not reviewed as a package, but rather each individual provision of a settlement must be scrutinized on its own merits.

Next, the practice of a utility acquiring signatures for a settlement through the payment of cash and cash equivalent benefits to the signatory party must be stopped. It is interesting to note, in 2015, the PUCO issued an order that put out a strong message cautioning parties against such practice. The PUCO stated: "The Commission notes that provision 1.b. of the Stipulation includes direct payments to intervenors of funds to be refunded to ratepayers. ... [T]he Signatory Parties to this Stipulation and parties to future stipulations should be forewarned that such provisions are strongly disfavored by this Commission and are highly likely to be stricken from any future stipulation submitted to the Commission for approval.".[[24]](#footnote-25) To my knowledge, this cautionary Order from the PUCO has unfortunately not served to deter this practice in subsequent cases.

***Q24. IS YOUR TESTIMONY CONCLUDED?***

***A24.*** Yes. But I reserve the right to supplement my testimony in the event that additional testimony is filed, or if new information or data in connection with this proceeding becomes available.

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Testimony of Edward W. Hill, Ph.D. on Behalf of the Office of the Ohio Consumers’ Counselwas served via electronic transmission to the persons listed below on this 17th day of December 2020.

*/s/ Christopher Healey*

Christopher Healey

Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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|  |  |
| --- | --- |
| Case No. 18-1875-EL-GRD, et al.  steven.beeler@ohioattorneygeneral.gov  Robert.eubanks@ohioattorneygeneral.gov  Bethany.allen@igs.com  Joe.oliker@igs.com  Michael.nugent@igs.com  dstinson@bricker.com  kherstein@bricker.com  jspottswood@bricker.com  jdunnlegal@gmail.com  kevin.oles@thompsonhine.com  stephanie.chmiel@thompsonhine.com  cmooney@opae.org  whitt@whitt-sturtevant.com  glover@whitt-sturtevant.com  drinebolt@opae.org  nvijaykar@elpc.org  glpetrucci@vorys.com  dparram@bricker.com  dstinson@bricker.com  Attorney Examiners:  Patricia.schabo@puco.ohio.gov  gregory.price@puco.ohio.gov | ccox@elpc.org  Michael.schuler@aes.com  jsharkey@ficlaw.com  djireland@ficlaw.com  chollon@ficlaw.com  fdarr@mwncmh.com  mpritchard@mwncmh.com  [mfleisher@dickinsonwright.com](mailto:mfleisher@dickinsonwright.com)  cpirik@dickinsonwright.com  mkurtz@bkllawfirm.com  kboehm@bklawfirm.com  jkylercohn@bkllawfirm.com  Bojko@carpenterlipps.com  Dressel@carpenterlipps.com  Paul@carpenterlipps.com  Dutton@carpenterlipps.com  slesser@beneschlaw.com  talexander@beneschlaw.com  mkeaney@beneschlaw.com |
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|  |  |  |
| --- | --- | --- |
| Case No. 19-1121-EL-UNC  steven.beeler@ohioattorneygeneral.gov  Michael.schuler@aes.com  mkurtz@bkllawfirm.com  kboehm@bkllawfirm.com  talexander@beneschlaw.com  Attorney Examiners:  Patricia.schabo@puco.ohio.gov  gregory.price@puco.ohio.gov | jkylercohn@bkllawfirm.com  bojko@carpenterlipps.com  paul@carpenterlipps.com  mpritchard@mcneeslaw.com  rglover@mcneeslaw.com | |
| Case No. 20-1041-EL-UNC  steven.beeler@ohioattorneygeneral.gov  Michael.schuler@aes.com  Bojko@carpenterlipps.com  Paul@carpenterlipps.com  Attorney Examiners:  Patricia.schabo@puco.ohio.gov  Michael.williams@puco.ohio.gov | mpritchard@mcneeslaw.com  rglover@mcneeslaw.com  talexander@beneschlaw.com | |
| Case No. 20-680-EL-UNC  thomas.lindgren@ohioattorneygeneral.gov  dparram@bricker.com  dstinson@bricker.com  jspottswood@bricker.com  bojko@carpenterlipps.com  Bethany.allen@igs.com  Joe.oliker@igs.com  Michael.nugent@igs.com  Fdarr2019@gmail.com  paul@carptenterlipps.com  kevin.oles@thompsonhine.com  stephanie.chmiel@thompsonhine.com  Attorney Examiners:  Patricia.schabo@puco.ohio.gov  [Michael.williams@puco.ohio.gov](mailto:Michael.williams@puco.ohio.gov) | | jsharkey@ficlaw.com  djireland@ficlaw.com  chollon@ficlaw.com  michael.schuler@aes.com  mkurtz@bkllawfirm.com  kboehm@bkllawfirm.com  jkylercohn@bkllawfirm.com  mpritchard@mcneeslaw.com  rglover@mcneeslaw.com  slesser@beneschlaw.com  talexander@beneschlaw.com  mkeaney@beneschlaw.com  khehmeyer@beneschlaw.com | |

1. *Electricity Customer Choice in Ohio: How competition has outperformed traditional monopoly regulation*. Northeast Ohio Public Energy Council, January 2017 and *Update on* *Electricity Customer Choice in Ohio: Competition continues to outperform traditional monopoly regulation*. Northeast Ohio Public Energy Council, August 2019. [↑](#footnote-ref-2)
2. Mancur Olson. *The Logic of Collective Action* (Harvard University Press, 1965). [↑](#footnote-ref-3)
3. George T. Stigler.1970. Director's Law of Public Income Redistribution, *Journal of Law and Economics* 13(1): 1-10. [↑](#footnote-ref-4)
4. *The Rise and Decline of Nations* (Yale University Press, 1982), especially pp. 43-47; also see Gordon Tullock. *The Economics of Special Privilege and Rent Seeking* (Kluwer Academic Publishers, 1989); reprinted as “Rent Seeking: An Overview,” in *The Rent-Seeking Society* (Liberty Fund, 2005), especially pp. 48-53. [↑](#footnote-ref-5)
5. “Mancur Lloyd Olson, scourge of special interests, died on February 19th, aged 66.” *The Economist*, March 5, 1998 (emphasis added), *available at* <https://www.economist.com/obituary/1998/03/05/mancur-olson>. [↑](#footnote-ref-6)
6. Settlement at 2. [↑](#footnote-ref-7)
7. Opinion and Order, Case No. 16-395-EL-SSO, Case No. 16-396-EL-ATA, and Case No. 16-307-EL-AAM, October 20, 2017 [↑](#footnote-ref-8)
8. Settlement at 2 (emphasis added). [↑](#footnote-ref-9)
9. Schroder Testimony at 13 (emphasis added). [↑](#footnote-ref-10)
10. Settlement at 37. [↑](#footnote-ref-11)
11. As I explain below, DP&L claims that it pays for some of these costs with “shareholder” dollars is inaccurate. DP&L is charging customers nearly $80 million per year under the “rate stabilization rider,” is are not related to any operating or capital costs that DP&L incurs. In other words, this entire $80 million per year revenue stream is intended to go directly to the ownership of DP&L and to shore-up DP&L’s balance sheet. So, in effect, DP&L is taking just a small piece of the customer funds from the rate stabilization rider and redistributing it to the signatory parties or projects that are endorsed by one of the signatory parties. [↑](#footnote-ref-12)
12. Settlement at 35-37. [↑](#footnote-ref-13)
13. Settlement at 33-42. [↑](#footnote-ref-14)
14. From SEC form 10-Q: “DP&L shareholder funding, in an aggregate amount of approximately $30.0 million over four years, for certain economic development discounts, incentives, and grants to certain commercial and industrial customers, including hospitals and manufacturers, assistance for low-income customers as well as the residents and businesses of the City of Dayton, and promotion of solar and resiliency development within DP&L’s service territory.” Dayton Power & Light Company, Form 10-Q for the quarter ending September 30, 2020, link associated with $30.0 million in the fifth bullet on page 18. <https://www.sec.gov/ix?doc=/Archives/edgar/data/27430/000078725020000061/dpl-20200930.htm#i49975861c574421f887c0904ece3405f_61>. [↑](#footnote-ref-15)
15. *See* Direct Testimony of Matthew I. Kahal on behalf of the Office of the Ohio Consumers’ Counsel. [↑](#footnote-ref-16)
16. Settlement at 18. [↑](#footnote-ref-17)
17. Settlement at 30-32. [↑](#footnote-ref-18)
18. Rider IIR is described in the Stipulation at 5. [↑](#footnote-ref-19)
19. Settlement at 13-18 [↑](#footnote-ref-20)
20. *See* Direct Testimony of Daniel J. Duann, Ph.D. on Behalf of the Office of the Ohio Consumers’ Counsel (Dec. 17, 2020). [↑](#footnote-ref-21)
21. *See* Direct Testimony of Paul Alvarez on Behalf of the Office of the Ohio Consumers’ Counsel (Dec. 17, 2020). [↑](#footnote-ref-22)
22. *See* Duann Testimony. [↑](#footnote-ref-23)
23. *In re Matter of the Application of Ohio Edison Co., the Cleveland Electric Illuminating Co., & the Toledo Edison Co. for Authority to Establish a Standard Service Offer*, Case No. 08-395-EL-SSO, Second Opinion & Order, Concurring in Part and Dissenting in Part Opinion of Commissioner Cheryl L. Robert at 2 (Mar. 25, 2009) [↑](#footnote-ref-24)
24. *In re Application of Columbus S. Power Co. & Ohio Power Co. for Authority to Recover Costs Associated with the Ultimate Construction & Operation of an Integrated Gasification Combined Cycle Electric Generation Facility*, Case No. 05-376-EL-UNC, Order on Remand at 11-12 (Feb. 11, 2015). [↑](#footnote-ref-25)