

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company to Increase Its Rates for Electric Distribution	:	CASE NO. 20-1651-EL-AIR
	:	

In the Matter of the Application of The Dayton Power and Light Company for Accounting Authority	:	CASE NO. 20-1652-EL-AAM
	:	

In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs	:	CASE NO. 20-1653-EL-ATA
	:	

**MOTION FOR ORAL ARGUMENT BY
THE DAYTON POWER AND LIGHT COMPANY D/B/A AES OHIO**

REQUEST FOR EXPEDITED RULING

Pursuant to Ohio Adm. Code § 4901-1-32, The Dayton Power and Light Company d/b/a AES Ohio moves for oral argument on the issue of whether a rate freeze can lawfully be implemented in this case. Post-hearing briefing will be completed in this case on March 30, 2022, and AES Ohio requests that oral argument be scheduled as soon as possible after that date.

AES Ohio requests that this motion be considered on an expedited basis pursuant to Ohio Adm. Code 4901-1-12(C).

Respectfully submitted,

/s/ Christopher C. Hollon

Christopher C. Hollon (0086480)
THE DAYTON POWER AND
LIGHT COMPANY d/b/a AES OHIO
1065 Woodman Drive
Dayton, OH 45432
Telephone: (937) 259-7358
Telecopier: (937) 259-7178
Email: christopher.hollon@aes.com

/s/ Jeffrey S. Sharkey

Jeffrey S. Sharkey (0067892)
(Counsel of Record)
D. Jeffrey Ireland (0010443)
Melissa L. Watt (0092305)
FARUKI PLL
110 North Main Street, Suite 1600
Dayton, OH 45402
Telephone: (937) 227-3747
Telecopier: (937) 227-3717
Email: jsharkey@ficlaw.com
djireland@ficlaw.com
mwatt@ficlaw.com

Counsel for The Dayton Power and Light
Company d/b/a AES Ohio

(willing to accept service via electronic mail)

**MEMORANDUM IN SUPPORT OF
MOTION FOR ORAL ARGUMENT BY
THE DAYTON POWER AND LIGHT COMPANY D/B/A AES OHIO**

Oral argument is appropriate at any time during a proceeding upon motion by any party:

"The commission, the legal director, the deputy legal director, or an attorney examiner may, upon motion of any party or upon their own motion, hear oral arguments at any time during a proceeding. Such arguments may, in the discretion of the commission, the legal director, the deputy legal director, or the attorney examiner, be limited to one or more specific issues, and are subject to such time limitations and other conditions as the commission, the legal director, the deputy legal director, or the attorney examiner may prescribe."

Ohio Adm. Code 4901-1-32.

Staff and several intervenors have asserted that AES Ohio's rates are frozen in this case as a result of a Stipulation and Recommendation signed in another case. The Commission should conduct oral argument on the issue of whether a rate freeze can lawfully be implemented in this case for the following reasons.

First, the legal issues relating to the rate freeze are novel, and oral argument will assist the Commission to evaluate them. Specifically, after AES Ohio terminated ESP III, it is undisputed that the Commission was required ("shall") to implement the "provisions, terms, and conditions of [AES Ohio's] most recent standard service offer." R.C. 4928.143(C)(2)(b). The parties disagree about what that means.

It is AES Ohio's position that R.C. 4928.143(A) establishes that a "standard service offer" includes "[o]nly" terms that are "authorized" by the ESP statute.¹ Further, the ESP

¹ See Initial Post-Hearing Brief of AES Ohio, pp. 6-11.

statute does not and cannot authorize the Commission to implement a rate freeze.² Therefore, the rate freeze was not an ESP term, was not a term of AES Ohio's "most recent standard service offer," and was not reinstated when ESP I was reinstated.³

In contrast, Staff and several intervenors have asserted that the 2009 Stipulation and Recommendation⁴ that created ESP I includes a distribution rate freeze.⁵ They assert that the rate freeze was thus a term of ESP I, and was reinstated when ESP I was reinstated.

There are other novel issues as well. For example, AES Ohio has asserted that the intervenors waived the rate freeze issue by failing to assert it earlier, and that the Commission is barred by R.C. 4909.15(E) from freezing AES Ohio's rates.⁶

Oral argument would assist the Commission to evaluate these novel legal issues.

Second, the rate freeze issue is of vital importance to AES Ohio and its customers. Specifically, AES Ohio currently has the lowest rates in the state (and would continue to do so even if its application in this matter was approved as-filed).⁷ AES Ohio's current rates were set based upon a 2015 test year, and costs have increased significantly since then.⁸ For example, the cost to trim vegetation on a mile of AES Ohio's distribution lines has increased by 170% since 2015.⁹

² *See id.*

³ *See id.*

⁴ AES Ohio Ex. 69.

⁵ Brief submitted on behalf of the Staff of the Public Utilities Commission of Ohio, pp. 3-9; Consumer Protection Brief by Office of the Ohio Consumers' Counsel, pp. 9-12; Initial Brief of Industrial Energy Users, pp. 1-3; Post-Hearing Brief by the Kroger Co., pp. 11-16; The Ohio Hospital Association's Initial Post-Hearing Brief, pp. 2-3; Post-Hearing of the Ohio Manufacturers' Association Energy Group, pp. 18-25.

⁶ *See* Initial Post-Hearing Brief of AES Ohio, pp. 13-22.

⁷ AES Ohio Ex. 19, pp. 6-7 and Ex. RJA-1; Tr. 114-17.

⁸ AES Ohio Ex. 95, p. 8.

⁹ *Id.*

Due to its "fragile" financial condition,¹⁰ low rates and rising costs, AES Ohio has been struggling to provide reliable service to its customers.¹¹ In fact, AES Ohio has failed to achieve its Commission-approved reliability metrics for 2017, 2019 and 2020 (2021 data is not yet finalized).¹²

AES Ohio has been operating under the assumption that a rate increase would be implemented in this case, and has been spending more money than it is recovering in rates.¹³ If a rate freeze were to be implemented in this case, AES Ohio would be forced to make drastic cuts to its reliability-related expenditures, which will create significant new and additional challenges to AES Ohio's ability to provide reliable service.¹⁴

As but one example, the majority of AES Ohio's line maintenance and vegetation management work is done by 364 contractors.¹⁵ When a significant storm hits AES Ohio's service territory, AES Ohio redirects those contractors to storm restoration, so those persons are vital to AES Ohio's storm restoration efforts.¹⁶ If a rate freeze were to be implemented, then AES Ohio would be forced to cut 170 of those contractors, a 47% cut.¹⁷ That reduction would significantly impair AES Ohio's ability not only to perform routine line maintenance but also to respond to storms.¹⁸

¹⁰ *In re AES Ohio's Application to Modernize Its Distribution Grid*, Case No. 18-1875-EL-GRD, et al., Opinion and Order ¶ 58 (June 16, 2021).

¹¹ AES Ohio Ex. 95, pp. 5-9.

¹² *Id.* at 7.

¹³ *Id.* at 10.

¹⁴ *Id.*

¹⁵ *Id.* at 11.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

In addition, AES Ohio would have to make significant cuts to its maintenance and capital investment expenditures, which will further impair AES Ohio's ability to provide reliable service.¹⁹

A decision by this Commission to freeze AES Ohio's rates would thus make it difficult, if not impossible, for AES Ohio to provide reliable service. Oral argument is thus warranted in this case to allow the Commission to better evaluate the legal issues and consequences of a Commission decision in this case.

The Commission should thus schedule oral argument in this case as soon as possible after briefing is concluded.

¹⁹ *Id.* at 12-18.

Respectfully submitted,

/s/ Christopher C. Hollon

Christopher C. Hollon (0086480)
THE DAYTON POWER AND
LIGHT COMPANY d/b/a AES OHIO
1065 Woodman Drive
Dayton, OH 45432
Telephone: (937) 259-7358
Telecopier: (937) 259-7178
Email: christopher.hollon@aes.com

/s/ Jeffrey S. Sharkey

Jeffrey S. Sharkey (0067892)
(Counsel of Record)
D. Jeffrey Ireland (0010443)
Melissa L. Watt (0092305)
FARUKI PLL
110 North Main Street, Suite 1600
Dayton, OH 45402
Telephone: (937) 227-3747
Telecopier: (937) 227-3717
Email: jsharkey@ficlaw.com
djireland@ficlaw.com
mwatt@ficlaw.com

Counsel for The Dayton Power and Light
Company d/b/a AES Ohio

(willing to accept service via electronic mail)

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion for Oral Argument by The Dayton Power and Light Company d/b/a AES Ohio has been served via electronic mail upon the following counsel of record, this 14th day of March, 2022:

Werner Margard
Jodi Bair
Kyle Kern
Office of Ohio Attorney General
30 East Broad Street, 16th Floor
Columbus, OH 43215
Werner.margard@OhioAGO.gov
jodi.bair@ohioattorneygeneral.gov
kyle.kern@ohioattorneygeneral.gov

Counsel for Staff of the Commission

Kimberly W. Bojko
Thomas V. Donadio
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, OH 43215
bojko@carpenterlipps.com
donadio@carpenterlipps.com

*Counsel for The Ohio Manufacturers'
Association Energy Group*

Angela Paul Whitfield
Jonathan B. Wygonski
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, OH 43215
paul@carpenterlipps.com
wygonski@carpenterlipps.com

Counsel for The Kroger Company

Michael L. Kurtz
Kurt J. Boehm
Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
Mkurtz@BKLLawfirm.com
Kboehm@BKLLawfirm.com
Jkylercohn@BKLLawfirm.com

Counsel for Ohio Energy Group

Maureen R. Willis
Ambrosia E. Wilson
John Finnigan
The Office of the Ohio Consumers'
Counsel
65 East State Street, 7th Floor
Columbus, OH 43215
Maureen.willis@occ.ohio.gov
ambrosia.wilson@occ.ohio.gov
john.finnigan@occ.ohio.gov

*Counsel for The Office of the Ohio
Consumers' Counsel*

Brian M. Zets
Isaac Wiles & Burkholder, LLC
Two Miranova Place, Suite 700
Columbus, OH 43215
bzets@isaacwiles.com

*Special Counsel for The Office of the
Ohio Consumers' Counsel*

Matthew R. Pritchard
Bryce A. McKenney
MCNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215
mpritchard@mcneeslaw.com
bmckenney@mcneeslaw.com

Counsel for Industrial Energy Users-Ohio

Robert Dove
KEGLER BROWN HILL +
RITTER CO., L.P.A.
65 East State Street, Suite 1800
Columbus, OH 43215-4295
rdove@keglerbrown.com

*Counsel for Ohio Partners for
Affordable Energy*

Carrie H. Grundmann
SPILMAN THOMAS & BATTLE, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103
cgrundmann@spilmanlaw.com

Derrick Price Williamson
SPILMAN THOMAS & BATTLE, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com

Counsel for Walmart Inc.

Kara Herrnstein
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
kherrnstein@bricker.com

Counsel for ChargePoint, Inc.

Joseph Olikier
Michael Nugent
Evan Betterton
Bethany Allen
IGS ENERGY
6100 Emerald Parkway
Dublin, OH 43016
joe.oliker@igs.com
michael.nugent@igs.com
evan.betterton@igs.com
Bethany.allen@igs.com

Counsel for IGS Energy

Janean Weber
Environmental Law & Policy Center
21 West Broad Street, 8th Floor
Columbus, OH 43215
jweber@elpc.org

*Counsel for Environmental Law & Policy
Center*

Devin D. Parram
Rachael N. Mains
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
dparram@bricker.com
rmains@bricker.com

Counsel for The Ohio Hospital Association

Mark A. Whitt
Lucas A. Fykes
WHITT STURTEVANT LLP
The KeyBank Building
88 East Broad Street, Suite 1590
Columbus, OH 43215
whitt@whitt-sturtevant.com
fykes@whitt-sturtevant.com

*Counsel for Direct Energy Business LLC
and Direct Energy Services, LLC*

Drew B. Romig
230 West Street, Suite 150
Columbus, OH 43215
dromig@nationwideenergypartners.com

Christina Wieg
FROST BROWN TODD LLC
10 West Broad Street, Suite 2300
Columbus, OH 43215
cwieg@fbtlaw.com

Darren A. Craig (Admitted Pro Hac Vice)
Robert L. Hartley (Admitted Pro Hac Vice)
FROST BROWN TODD LLC
201 North Illinois Street, Suite 1900
P.O. Box 44961
Indianapolis, IN 46204
dcraig@fbtlaw.com
rhartley@fbtlaw.com

*Counsel for Nationwide Energy Partners,
LLC*

N. Trevor Alexander
Kari D. Hehmeyer
Sarah G. Siewe
BENESCH FRIEDLANDER COPLAN &
ARONOFF
41 South High Street, Suite 2600
Columbus, OH 43215
talexander@beneschlaw.com
khehmeyer@beneschlaw.com
ssiewe@beneschlaw.com

Counsel for The City of Dayton

Chris Tavenor
1145 Chesapeake Avenue, Suite I
Columbus, OH 43212-3449
ctavenor@theOEC.org

Counsel for Ohio Environmental Council

Matthew W. Warnock
Dylan F. Borchers
Kara H. Herrnstein
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
mwarnock@bricker.com
dborchers@bricker.com
kherrnstein@bricker.com

Marion H. Little, Jr.
Christopher J. Hogan
ZEIGER, TIGGES & LITTLE LLP
41 South High Street
3500 Huntington Center
Columbus, OH 43215
little@litohio.com
hogan@litohio.com

Katie Johnson Treadway
James Dunn
ONE ENERGY ENTERPRISES LLC
Findlay, OH 45840
ktreadway@oneenergyllc.com
jdunn@oneenergyllc.com

Counsel for One Energy Enterprises, LLC

Stephanie M. Chmiel
Kevin D. Oles
Thompson Hine LLP
41 South High Street, Suite 1700
Columbus, OH 43215
Stephanie.Chmiel@ThompsonHine.com
Kevin.Oles@ThompsonHine.com

Counsel for the University of Dayton

/s/ Jeffrey S. Sharkey
Jeffrey S. Sharkey

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Summary: Motion Motion for Oral Argument by The Dayton Power and Light
Company D/B/A AES Ohio Request for Expedited Ruling electronically filed by Mr.
Jeffrey S. Sharkey on behalf of The Dayton Power and Light Company