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

REPLY BRIEF OF ONE ENERGY ENTERPRISES INC.

"The world hates change, yet it is the only thing that has brought progress," Charles Kettering, 1959. The Ohio legislature recognized the need to push Ohio forward, through the discomfort by enacting R.C. 4928.02 which codified Ohio's state energy policy. Unfortunately, based on the initial post-hearing briefs, it is apparent that the Company dislikes change more than it values progress. It also is apparent that the PUCO Staff is allowing the Company to frustrate Ohio's progress towards its goals. There are things happening in this case that simply cannot and should not be allowed to continue.

First, the Company should be required to complete a gender and race wage gap study to determine whether it has achieved gender and race wage parity. The Company and PUCO Staff need to get comfortable being uncomfortable, and prioritize their supposed commitment to diversity, equity, and inclusion efforts. If the Company is paying its male employees in excess of what it is paying its female employees, the cost of that preferential treatment is being unfairly forced on to ratepayers. Yet, this critical management issue, which has a direct impact on the

Company's operating expenses and rate base, was conveniently ignored by the Company and PUCO Staff in their preparation and review of the Application[1], and in their initial post-hearing briefs.

Second, the PUCO should not reward the Company for its "very fragile financial condition"[2] (a leading justification for the Company's unreasonably high rate of return request), and reliability problems.[3] Instead, the PUCO should order a comprehensive audit of the Company's management practices to ensure it remains financially solvent, and is prudently spending the money received from its captive ratepayers. In other instances, the Staff and Commission has not been afraid to thoroughly investigate a utility's management practices and order a comprehensive audit[4] or even appoint a receiver in some cases.[5] Ratepayers deserve the same level of protection here.

Third, the PUCO should not continue to allow the Company, or any other public utility, to solely rely on the National Association of Regulatory Utility Commissioner's Electric Utility

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[1] The Company acknowledged that it did not consider whether a wage gap exists in preparing its Application. (Cross-Examination of Buchanan, Vol. I, 158:10-19; 160:8-10.) Staff Witness Crocker confirmed that she has "not ever conducted an analysis between pay for men and women." (Tr. Vol. V, p. 1087, lines 9-11).

[2] (Tr. Vol. II, p. 239, lines 12-13). Throughout the Company's initial post-hearing brief, it emphasizes its longstanding financial problems: (i) "As the Commission knows, AES Oho has long been in a 'fragile' financial condition" (page 22); (ii) citing to the testimony of Staff Witness Lipthratt to describe the Company as being in financial "distress"; (iii) citing to the testimony of the Company's own President to describe the Company as having "been in a 'fragile financial condition for a long time.'"

[3] On pages 24-25 of the Company's Brief, it states: "As the Commission knows, AES Ohio is already struggling to provide reliable service, and further cuts will exacerbate that problem." Further, on page 25 of the Company's Brief, it states: "due to AES Ohio's poor financial condition, 'AES Ohio has been carefully managing its business to find savings in areas not directly connected to reliability for years. . . The savings efforts over the years in areas not directly connected to reliability have been all but exhausted."

[4] See e.g., *In the Matter of Ohio American Water Company to Increase its Rates for Water and Sewer Services*, Case No. 09-391-WS-AIR, May 5, 2010 Opinion and Order ("we are recommending an investigation and audit of the Company's management policies and administrative practices for purposes of the Company's next rate proceeding").

[5] See e.g., *In the Matter of the Review of Youngstown Thermal, LLC and Youngstown Thermal Cooling, LLC*, Case No. 17-1534-HC-UNC, June 30, 2017 Finding and Order ("The Commission further finds that, due to its inability to timely pay utility suppliers, debt service, and employee payroll and the magnitude by which its outstanding debt servicing requirements exceed currently projected revenue, Youngstown Thermal is in imminent danger of insolvency. Thus, pursuant to the authority granted by R.C. 4905.60, the Commission orders the Attorney General to seek the appointment of a receiver and pursue any other appropriate civil remedy").

Cost Allocation Manual (1992) ("1992 NARUC Manual"), which is now three decades old. The changes in the electric grid over the past thirty (30) years alone are reason enough to warrant utilization of other methodologies. Additionally, such reliance has led to a systematic devaluation of private investment in on-site generation that is inconsistent with Ohio's codified public policy as set forth in R.C. 4928.02(C). Although this issue was ignored by the Company and PUCO Staff in their briefing, there is an easy solution to ending this archaic practice. It simply requires the PUCO to order the Company and encourage the PUCO Staff, to: (i) review whether sole reliance on the 1992 NARUC Manual is reasonable for purposes of allocating distribution-related costs; (ii) analyze the Company's rates and rate design to ensure they are consistent with Ohio's energy policies set forth in R.C. 4928.02, in particular those encouraging innovation, peak demand reduction and the development and implementation of distributed generation resources; and, (iii) have the Company demonstrate that they have considered other, more modern cost allocation methodologies.

Fourth, the Company's proposed rate of return is unreasonably high due to: (i) its embedded cost of long-term debt is inflated (another topic ignored by the Company and PUCO Staff) and, (ii) its cost of common equity does not accurately reflect the risk profile or capital structure of the Company. Although many of the intervening parties in this case appropriately and persuasively attack the Company's cost of common equity analysis (and unreasonably high cost of common equity number) in their post-hearing briefs,[6] neither they nor the PUCO Staff questioned whether the Company's embedded cost of debt number is inflated. It is clear such an analysis is necessary considering that the embedded cost of debt accounts for more than half of the Company's proposed rate of return *and* the Company itself acknowledges that it is paying for

[6] *See, e.g.*, Post-Hearing Brief by The Kroger Co., filed 3/4/2022, at 5; Post-Hearing Brief of the Ohio Manufacturer's Association Energy Group, filed 4/4/2022, at 4; Consumer Protection Brief by Office of the Ohio Consumers' Counsel, filed 3/4/2022, at 34, et seq.

expensive debt with a higher leverage ratio than necessary.[7] It is knowingly overpaying for debt and passing that cost on to ratepayers. When taking into account the inflated embedded cost of debt number used by the Company (and accepted by the PUCO Staff), it results in a rate of return below what was recommended in the Staff Report.

Finally, the PUCO must not waste the opportunity presented in a distribution rate case to require a public utility, like the Company, to comprehensively update its tariffs. Outdated references should be removed, tariffs should be made completely gender neutral, and the entirety of a public utility's tariff (not just part of it) should be examined as part of a distribution rate case. Here, that simply did not happen. This same mistake should not be made in future rate cases.

As a regulated utility entrusted with a certified territory and monopoly over Ohio citizens, the Commission must demand more from the Company and its management. The status quo is no longer sufficient. Change is needed in order to make progress.

Respectfully submitted on behalf of
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[7] *See* Initial Post Hearing Brief on behalf of One Energy Enterprises, Inc., filed 3/4/2022, at 12.

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The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing Reply Brief was served upon the parties of record listed below this 30th day of March 2022 *via* electronic mail.

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Summary: Reply Brief of One Energy Enterprises Inc. electronically filed by Teresa Orahood on behalf of Matthew W. Warnock