

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power and Light Company to)	Case No. 20-1651-EL-AIR
Increase its Rates for Electric)	
Distribution.)	

In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 20-1652-EL-AAM
Accounting Authority.)	

In the Matter of the Application of The)	
Dayton Power and Light Company for)	Case No. 20-1653-EL-ATA
Approval of Revised Tariffs.)	

POST-HEARING REPLY BRIEF OF WALMART INC.

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Dated: March 30, 2022

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POST-HEARING REPLY BRIEF

Walmart Inc. ("Walmart"), by its attorneys, respectfully submits this Reply Brief to the Public Utilities Commission of Ohio ("Commission") to address certain arguments made by: (1) Dayton Power and Light Company d/b/a AES Ohio ("AES Ohio" or "Company") regarding the testimony provided by Walmart witness Alex J. Kronauer; and (2) Commission Staff ("Staff") concerning its Low Load Factor Provision rate.¹

The Company wrongly claims that the Commission should reject Alex J. Kronauer's testimony, which offers information regarding recent return on equity ("ROE") awards both in Ohio and around the country. Mr. Kronauer's testimony is highly relevant and clearly admissible because it assists the Commission in evaluating the reasonableness of the 10.50 percent ROE requested by the Company.

¹ In its initial brief, AES Ohio relies in part on fact testimony to oppose a rate freeze. *See* AES Ohio Initial Post-Hearing Brief, pp. 22-26 (arguing that, in the event of a rate freeze, "AES Ohio would be forced to make significant cuts to its reliability expenditures"). While Walmart continues to take no position on the legal issue of the rate freeze, it continues to request that the Commission only consider the legal issues and disregard the fact testimony and fact arguments made by AES Ohio. *See* Walmart Initial Post-Hearing Brief, pp. 9-10.

Regarding Staff's alternative Low Load Factor Provision rate, Walmart continues to support the Company's proposed Low Load Factor Provision rate over Staff's proposal to increase the max charge at a lesser rate. Should the Commission adopt the Staff proposal, the Commission should additionally require gradual movement towards the Company's 10 percent low load factor threshold over a multi-year period as determined by the Commission.

ARGUMENT

1. The Commission Should Consider Walmart Witness Kronauer's Testimony when Determining the Reasonableness of AES Ohio's Requested ROE.

The Company's request that the Commission "reject" Mr. Kronauer's testimony misses the mark.² Mr. Kronauer never claimed to, and, in fact, did not, conduct an "independent analysis of what [he] thought an appropriate ROE would be" for AES Ohio.³ Had Mr. Kronauer sought to offer such ROE analysis, then the Company's arguments regarding his stated expertise and prior training and testimony may be relevant. However, as that is not the testimony offered by Mr. Kronauer, AES Ohio's arguments are nonsensical. Other than arguing that Mr. Kronauer is not an expert for conducting an ROE analysis -- something Mr. Kronauer readily admitted and never claimed -- the Company offers no legitimate explanation for rejecting Mr. Kronauer's testimony.

Mr. Kronauer stated quite clearly and succinctly that his testimony provided context to this Commission to assist it "in terms of determining the appropriate ROE for this case."⁴ Indeed, this

² Moreover, this request appears to be a backdoor attempt to strike Mr. Kronauer's testimony, which comes too late. Mr. Kronauer was deposed in this case on January 18, 2022; all of the same issues raised in the Company's Initial Post-Hearing Brief were explored in that deposition. The Attorney Examiner's Entry dated December 21, 2021, gave the Company until January 21, 2022, to file a motion to strike Mr. Kronauer's testimony. *See* Entry at ¶ 10. AES Ohio did not file a motion to strike prior to the deadline, and it did not seek to strike Mr. Kronauer's testimony during the hearing in this matter. The issues raised in the Company's Initial Post-Hearing Brief could (and should) have been raised in a motion to strike, but they were not. It is puzzling why AES Ohio raises this issue now, after it neglected to do so throughout the entirety of the proceeding. The Commission should reject this last-minute attempt to strike Mr. Kronauer's testimony.

³ Transcript Vol. V, p. 975, line 20 to p. 976, line 18.

⁴ *Id.*, p. 978, line 24 to p. 979, line 14.

data can help this Commission gauge the reasonableness of the return requested by the Company in this case.⁵ Moreover, it is quite clear that Mr. Kronauer's testimony *will* assist the Commission as it has assisted other state regulatory commission considering this issue.⁶ Numerous parties have offered testimony on the appropriate ROE to be awarded to the Company, and they offer various ranges for their ROE results.⁷ The Commission can evaluate not only the specific ROE recommended by a given ROE witness, but can also evaluate whether an alternative ROE within the range of results is more appropriate. Recently awarded ROEs across the country is but one metric the Commission can use for that purpose.

Mr. Kronauer's testimony is clearly admissible, and the Commission should rely on Mr. Kronauer's testimony, in part, to find that the AES Ohio has not carried its burden to justify an increase in the Company's ROE. Instead, the Commission should find that an ROE below the Company's currently authorized ROE is supported by the testimony of the various ROE witnesses, including the Company's own ROE witness, and recent ROE trends both within Ohio and nationwide.

2. The Commission Should Approve the Company's Proposed Low Load Factor Provision Rate.

Walmart continues to support approval of the Company's proposed Low Load Factor Provision rate over Staff's proposal to increase the max charge at a lesser rate.⁸ In its Initial Post-

⁵ Transcript Vol. V, p. 982, lines 10-19; *see also* Walmart Ex. 1, Direct Testimony of Alex J. Kronauer, p. 10, lines 8-13.

⁶ *See, e.g., Application of Baltimore Gas and Electric Company for an Electric and Gas Multi-Year Plan*, Maryland Public Service Commission Case No. 9645, Order on Pilot Application for Multi-Year Rate Plan (issued Dec. 16, 2020), ¶ 332 (citing Mr. Kronauer's concerns about proposed ROE increase on ratepayers and that the utility's proposed ROE was significantly higher than recently approved ROEs); *In the Matter of the Application of Delmarva Power & Light Company for an Increase in its Retail Rates for the Distribution of Electric Energy*, Maryland Public Service Commission Case No. 9630, Proposed Order of Public Utility Law Judge (issued June 9, 2020), ¶¶ 14, 80.

⁷ Indeed, Company witness McKenzie offers a range from 9.4 to 10.7 percent. *See* Company Ex. 91, Direct Testimony of Adrien M. McKenzie, p. 4, lines 2-4.

⁸ *See* Initial Post-Hearing Brief of Walmart Inc., pp. 7-8.

Hearing Brief, Staff responds to parties' objections to its recommendation by arguing that its proposal follows the long-standing principle of gradualism.⁹ However, what Staff describes as an intent to change max charge rates gradually, is actually only a singular, lesser increase than proposed by AES Ohio.

As The Kroger Company ("Kroger") noted in its Initial Post-Hearing Brief, Staff does not in fact propose any additional increases to max charge rates (to gradually move to the Company's rate), nor has it performed analysis to determine how high the maximum charge rate should be set.¹⁰ Without a proposal that gradually reaches a specific low load factor threshold over a period of years, Staff's proposal does not achieve the goal of gradualism. As such, Walmart continues to support the Company's Low Load Factor Provision rate. If the Commission adopts Staff's recommendation, then Walmart requests the Commission order gradual movement towards the Company's 10 percent low load factor threshold over a multi-year period as determined by the Commission.

CONCLUSION

For all the reasons set forth herein and its previously filed Initial Post-Hearing Brief, Walmart Inc. respectfully requests that the Commission:

1. Reject the Company's requested return on equity of 10.5 percent and instead award an ROE within the range of Commission Staff, Office of Consumer's Counsel, and the Company that is also consistent with recent ROE trends;
2. Require the Company to implement an opt-out for commercial and industrial customers that undertake their own DSM/EE efforts as a condition precedent to

⁹ See Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio, p. 35.

¹⁰ See Post-Hearing Brief by The Kroger Co., pp. 17-18.

- approval of the Company's proposed DSM/EE programs; and
3. Approve of the Company's Low Load Factor Provision, or, alternatively, adopt the Staff's revised Low Load Factor Provision and adopt a phase-in to the Company's Low Load Factor Provision over a multi-year period.

Respectfully submitted,

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Dated: March 30, 2022

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Post-Hearing Reply Brief of Walmart Inc., was served by electronic mail, upon the following Parties of Record on this 30th day of March, 2022.

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