**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of the Dayton Power and Light Company d/b/a AES Ohio for Approval of Its Electric Security Plan. | ))))) | Case No. 22-900-EL-SSO |

**MOTION FOR EXTENSION OF TIME TO FILE**

**TESTIMONY OPPOSING THE STIPULATION AND**

**MOTION TO SHORTEN THE DISCOVERY RESPONSE TIME AND**

**MOTION FOR EXPEDITED RULING**

**BY**

**OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") moves for a seven-day extension of time (until April 21, 2023) to file testimony opposing the Settlement and supporting testimony filed on April 10, 2023. Otherwise, OCC’s testimony is due on April 17, 2023, as set by Attorney Examiner Entry dated April 3, 2023.

Good cause exists for this motion under O.A.C. 4901-1-13(A) because of the inability of parties to incorporate Settlement discovery into their testimony. OCC also moves for an order shortening the discovery response time to seven days.

Finally, OCC moves for an expedited ruling on these Motions under O.A.C. 4901-1-12(C). At the time of this filing, OCC is unable to certify that other parties do not oppose an expedited ruling.

The grounds for these Motions are more fully set forth in the accompanying Memorandum in Support.

Respectfully submitted,

Bruce Weston (0016973)

Consumers’ Counsel

*/s/ Maureen R. Willis*

Maureen R. Willis (0020847)

Legal Director

Counsel of Record

John Finnigan (0018689)

Connor D. Semple (0101102)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone: Willis (614) 466-9567

Telephone: Finnigan (614) 466-9585

Telephone: Semple (614) 466-9565

maureen.willis@occ.ohio.gov

john.finnigan@occ.ohio.gov

connor.semple@occ.ohio.gov

(willing to accept service by e-mail)

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**MEMORANDUM IN SUPPORT**

This case is vital to Ohio consumers. Under the Settlement filed earlier this week, DP&L proposes new charges to consumers, including subsidies for old, past generation charges for outmoded, polluting, 1950’s-era coal power plants owned by the Ohio Valley Electric Corporation (“OVEC”). DP&L also seeks to collect from consumers over the next three years other deferred expenses and revenues unrelated to the current SSO offering to consumers.[[1]](#footnote-2) As with any case, and particularly this important case, stakeholders need time to conduct discovery, prepare and file testimony. The schedule adopted by the Attorney Examiner fails to provide adequate time.

The current procedural schedule requires testimony opposing the Settlement to be filed on April 17, 2023. And yet the discovery cut off in the case is the same day. It is also problematic that discovery responses are not due until 10 days after service. Under these facts, it is impossible to incorporate vital discovery responses into testimony under the current schedule set by the Attorney Examiner. (And OCC did send out discovery to Signatory Parties earlier this week, with the responses due under the 10 day period, on April 20 and 21)

Two things should happen here to assure parties are given at least minimal due process and an opportunity to be heard. First, the deadline for filing testimony in opposition to the Settlement should be extended seven days – to April 24, 2023. Further, the PUCO should shorten the discovery response time to seven days. This would give parties some time to conduct limited discovery and file testimony, enhancing the record in this case. We of course, are not opposed to the PUCO providing OCC with additional time for discovery as is the general practice when Settlements are reached, yet opposed by one or more parties. See, e.g., Case No. 14-1297-EL-SSO.

Good cause exists for the slight extension which should not prejudice other parties. Signatory parties filed a settlement in this proceeding on April 10, 2023, at the close of business. Testimony in opposition to the Settlement is due just seven days later, on April 17, 2023.[[2]](#footnote-3) Discovery is needed (and was sent out by OCC) to evaluate whether the terms of the electric security plan as presented in the settlement meet the three prong test for settlements.

As matters currently stand, parties are permitted to take up to ten days to answer discovery requests.[[3]](#footnote-4) This prevents parties from incorporating discovery answers into opposition testimony. An extension will help to develop a more complete record upon which the PUCO can base its decision in this proceeding.

Granting a minimal extension on testimony, to allow filed testimony to incorporate discovery responses, is also consistent with affording parties ample rights of discovery rights under Ohio law, R.C. 4903.082. The Ohio Supreme Court has recognized that discovery rules should be “liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.”[[4]](#footnote-5) Granting OCC seven days extra on the filing of testimony to incorporate discovery responses into filed testimony is reasonable and consistent with Ohio law.

The PUCO also has a statutory obligation to develop a full and complete record in contested cases in order to develop “findings of fact and written opinions setting forth the reasons prompting the decision arrived at, based upon said findings of fact.”[[5]](#footnote-6) Allowing the brief testimony extension along with expedited discovery will provide OCC with a modicum of due process.

Further, this case has been pending since September 2022. No prejudice will occur due to a brief seven-day testimony extension. OCC does not request an extension of the hearing date. A seven-day extension of the deadline for filing opposition testimony will still allow other parties time to prepare for the hearing. Based on all of the foregoing circumstances, good cause exists for this motion to extend testimony by seven days under O.A.C. 4901-1-13(A).

The PUCO also has authority to modify the response time for discovery.[[6]](#footnote-7) This motion asks the PUCO to require parties to respond to discovery in seven days. Again, parties to this proceeding are currently required to respond to discovery requests in ten days.[[7]](#footnote-8) Shortening the discovery response period to seven days would allow parties time to serve discovery, receive responses, and incorporate those responses into testimony.

For the reasons described above and in the interests of consumers, OCC requests that the PUCO extend the deadline for testimony in opposition to the stipulation by seven days – to April 24, 2023 – and shorten the time for discovery responses to seven days.

 Given the April 17, 2023, deadline for filing settlement opposition testimony, parties and stakeholders, and the PUCO, would benefit from an immediate ruling on these motions. Therefore, an expedited ruling on OCC’s Motions is appropriate as well as being needed. OCC cannot at this time certify that other parties do not object to an expedited ruling on these motions.

Respectfully submitted,

Bruce Weston (0016973)

Consumers’ Counsel

*/s/ Maureen R. Willis*

Maureen R. Willis (0020847)

Legal Director

Counsel of Record

John Finnigan (0018689)

Connor D. Semple (0101102)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone: Willis (614) 466-9567

Telephone: Finnigan (614) 466-9585

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maureen.willis@occ.ohio.gov

john.finnigan@occ.ohio.gov

connor.semple@occ.ohio.gov

(willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing Motion for Extension of Time to File Testimony Opposing the Stipulation and Motion to Shorten the Discovery Response Time and Motion for Expedited Ruling by Office of the Ohio Consumers' Counsel was served upon the persons listed below by electronic transmission this 14th day of April 2023.

 */s/ Maureen R. Willis*

Maureen R. Willis

Legal Director

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

**SERVICE LIST**

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| werner.margard@ohioAGO.govsarah.feldkamp@ohioAGO.govambrosia.wilson@ohioAGO.govdborchers@bricker.comkherrnstein@bricker.comdparram@bricker.comrmains@bricker.comdproano@bakerlaw.comahaque@bakerlaw.comeprouty@bakerlaw.comknordstrom@theOEC.orgctavenor@theOEC.orgleonard.bazelak@daytonohio.govbojko@carpenterlipps.comeasley@carpenterlipps.commwarnock@bricker.comAttorney Examiners:Gregory.price@puco.ohio.govPatricia.schabo@puco.ohio.gov | christopher.hollon@aes.comjsharkey@ficlaw.comdjireland@ficlaw.commwatt@ficlaw.commkurtz@bkllawfirm.comkboehm@bkllawfirm.comjkylercohn@bkllawfirm.comstacie.cathcart@igs.comevan.betterton@igs.commnugent@igsenergy.comstephanie.chmiel@thompsonhine.commary.csarny@thompsonhine.commpritchard@mcneeslaw.combmckenney@mcneeslaw.comawalke@mcneeslaw.comhenry.eyman@armadapower.commjsettineri@vorys.comglpetrucci@vorys.compaul@carpenterlipps.comtrent@hubaydougherty.comrdove@keglerbrown.comcgrundmann@spilmanlaw.comdwilliamson@spilmanlaw.com |

1. Stipulation and Recommendation (April 10, 2023) at 15. [↑](#footnote-ref-2)
2. Entry (April 3, 2023) at 3. [↑](#footnote-ref-3)
3. Entry (September 30, 2022) at 3. [↑](#footnote-ref-4)
4. *Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213, ¶¶ 82-83. [↑](#footnote-ref-5)
5. R.C. 4903.09. [↑](#footnote-ref-6)
6. O.A.C. 4901-1-19(A), O.A.C. 4901-1-20(C). [↑](#footnote-ref-7)
7. Entry (September 30, 2022) at 3. [↑](#footnote-ref-8)